

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

12 AUGUST 2020

DAY 249



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 12 AUGUST 2020

CHAIRPERSON: Good morning everybody. I have an application for a postponement brought by Minister Gordhan where he in effect applies for the postponement of his cross-examination by Mr Tom Moyane's counsel which was supposed to happen today. He says it should be – he applies for an order that he must appear on the 31 August 2020 alternatively on a date to be agreed by all parties.

Let me have the appearances.

10 **ADV FRANKLIN SC:** Good morning Chair I am A E Franklin SC the evidence leader for this segment of the matter.

CHAIRPERSON: Yes thank you Mr Franklin. Hang on one second. Do we have somebody who sanitises today? If there is nobody who sanitises you can just speak from where you – you are. Yes.

ADV MBATHA: Good morning Chair.

CHAIRPERSON: Good morning.

ADV MBATHA: I am Ms Mbatha and representing Minister Gordhan in this application.

20 **CHAIRPERSON:** Yes.

ADV MBATHA: I am from the office of the State Attorney.

CHAIRPERSON: Yes.

ADV MBATHA: Thank you.

CHAIRPERSON: You moving the application for a postponement?

ADV MBATHA: I am. Yes.

CHAIRPERSON: Well this affidavit which has been deposed to not by the Minister himself by somebody.

ADV MBATHA: It is of...

CHAIRPERSON: It says she is the Minister's Chief of Staff.

ADV MBATHA: Indeed so.

CHAIRPERSON: All it says is that the Minister is not available due to Cabinet commitments. There does not
10 appear to be any information about why those commitments are more important than appearing before this commission.

ADV MBATHA: Chair those were my instructions that the Minister is not available due the commitments that he had at the Cabinet so...

CHAIRPERSON: Mere Cabinet appointments on their own cannot be more important than appearing before this commission. There would need to be something more than just mere Cabinet commitments. This commission has got a very limited time to finish its work and Cabinet
20 commitments are work like everybody's work commitments. If everybody is going to say I have work commitments I cannot appear before the commission on this day then we are not going to finish this.

ADV MBATHA: With due respect Chair I think probably the application was not in – more into detail as to exactly

what the Minister is doing or what held him up at the Cabinet. But I am of the view that he does respect the commission and he has due respect for what is taking place here and his – he does want to come and give evidence if...

CHAIRPERSON: And what I do know is that the President has told me that he – he has told the Cabinet Ministers that whenever anyone is required to cooperate with the commission they must cooperate. It may be that our
10 solution is just to make sure that summons are issued against anyone who must appear before the commission because there are just too many instances where people say they cannot appear before the commission on a particular day. And I see here that the order sought is that his cross-examination should be ...

ADV MBATHA: On the 31st.

CHAIRPERSON: Postponed to the 31 August 2020 or to a date to be agreed by all parties. I am not going to postpone this matter to a date to be agreed by all parties.
20 Because if we are going to work like that we will not get anywhere. Lawyers are busy and if we are going to do that where we cannot do our job. So I will postpone it. I am not happy. I will postpone it to a date that I will fix that accords with the programme of the commission and I saw that Mr Tom Moyane's position was that although his

Counsel is not available from their side they say they are not asking for a postponement but they are – and they accept that their unavailability of counsel is not a good ground for a postponement. I will postpone it – I will fix a date and if Mr Moyane does not use that opportunity he might forfeit his right to cross-examine but we will have to make sure that the Minister is here on the date that is fixed so that we can – we want to finish the work of the commission and we are only a few – we are a few months
10 away from the end of the term of the commission so we have got to use all the days that we have properly. So – I think Mr Moyane’s Counsel – okay you may sit down.

ADV MBATHA: Thank you Chair.

CHAIRPERSON: Might wish to say something.

ADV MBATHA: Thank you Chair.

CHAIRPERSON: Yes just put on your microphone. Not mask microphone, microphone ja. No you – the mask – ja.

ADV SIBOTHO: Thank you Chairperson. My name is Mfesane Sibotho I am an advocate at duma Nokwe Group
20 of Advocates. I record my appearance on behalf of Mr Tom Moyane.

CHAIRPERSON: Hm.

ADV SIBOTHO: Our position is as simple as you have recorded Chairperson.

CHAIRPERSON: Hm.

ADV SIBOTHO: That in principle we are not opposed to the application for the postponement. Be that as it may we thought we would honour the opportunity we have been granted by the commission that if you take the position that we proceed today we are more than happy to.

CHAIRPERSON: Hm.

ADV SIBOTHO: But with that being said we understand the difficulty which is that Mr Gordhan is not in front of the commission for cross-examination.

10 **CHAIRPERSON:** Hm.

ADV SIBOTHO: And in principle we accept that we are in your hands. We are happy with the 31 August. Be that as it may we want to place it on record as well that we are happy – we are at the hands of the commission. I mean obviously there will be issues with the availability of lead counsel because you will understand given the length of the matter the involvement of counsel there might be difficulties having to find counsel within a short period of time.

20 **CHAIRPERSON:** Hm.

ADV SIBOTHO: But with that being said we want to place it on record that we will avail ourselves at the date that the commission will decide and if alternative means have to be made, we are happy to do so.

CHAIRPERSON: Hm. Okay. No that is fine. Thank you.

ADV SIBOTHO: Thank you Chair.

CHAIRPERSON: Yes. Mr Franklin do you want to say anything?

ADV FRANKLIN SC: Thank you Chair nothing specific other than to echo the sentiments of the Chair that it is regrettable that the matter has to be postponed. The practical solution as the Chair has already decided is to set another date and I understand that that will be done in communication between the Secretariat and the Chair.

10 **CHAIRPERSON:** Yes.

ADV FRANKLIN SC: That is all I have to say. Thank you.

CHAIRPERSON: Yes. No thank you very much we – I will postpone it and a date will be determined soon and the date will give everyone enough time to make sure if they were not to be available, they make themselves available. The cross-examination of Minister Gordhan which was scheduled for this – for today is hereby postponed to a date that is yet to be determined. Those who wish to be excused are excused. Good morning Mr Soni.

20 **ADV SONI SC:** Morning Chairperson.

CHAIRPERSON: Yes. Are you ready?

ADV SONI SC: Yes we are. Chairperson we have asked Mr Madimpe Mogashoa to give his evidence today. You will recall that earlier in July we had intended calling Mr Madimpe – I mean Mr Mogashoa but he could not come on

account of the fact that he was not feeling too well.

CHAIRPERSON: I think bring your microphone a little closer your voice.

ADV SONI SC: Yes as you please.

CHAIRPERSON: Voice is going down.

ADV SONI SC: Yes.

CHAIRPERSON: Yes.

ADV SONI SC: Sorry Chair.

CHAIRPERSON: Yes. Well he – he gives evidence in
10 relation to PRASA.

ADV SONI SC: That is so.

CHAIRPERSON: And he will be giving evidence in relation to his role as the attorney for PRASA in regard to among others I guess – I do not know whether it is among others but the Siyaya claims or cases and his interaction with the PRASA legal team as well as with the Chairperson at the time Judge Makhubele now.

ADV SONI SC: That is...

CHAIRPERSON: Yes. That is what he will be giving
20 evidence about.

ADV SONI SC: That is so Chairperson.

CHAIRPERSON: Yes.

ADV SONI SC: Chairperson may I place on record at the outset that last night the commission received an objection from Judge Makhubele who said that she had been given –

the notice that she had been given that Mr Mogashoa would be testifying today was too short place on record that she was given notice on Saturday.

CHAIRPERSON: Hm.

ADV SONI SC: I also place on record Chairperson that the decision to call Mr Mogashoa was made on Friday and that is when all the parties including Mr Mogashoa this was decided.

CHAIRPERSON: Hm. Well I must just indicate that the
10 calling of Mr Mogashoa today or sometime this week emanated from me in order to try and make sure that we use the time available as much as possible did not emanate from Mr Soni or anyone else. And to the extent that Judge Makhubele might have been given short notice

1. She will have access to the transcript of Mr Mogashoa's evidence and actually the acting secretary should send her a letter indicating to her how to access the transcript of Mr Mogashoa's evidence.

20 And in this regard also it is to be noted that she has not made any application for Leave to Cross-examine Mr Mogashoa. Indeed, other than the fact that when she gave evidence she denied having asked or instructed Mr Mogashoa not to speak to the PRASA legal team about the Siyaya claims other than that as far as I know she has not

filed any affidavit disputing anything in Mr Mogashoa's affidavit. Is that your standing as well?

ADV SONI SC: That is the position as I know it thank you Chairperson yes.

CHAIRPERSON: Yes. So – so other than that one denial she has not sought to tell us that she disputes Mr Mogashoa's affidavit or at least she has not done that by way of filing an affidavit despite the fact that she has had Mr Mogashoa's affidavit for a long time.

10 **ADV SONI SC:** Yes.

CHAIRPERSON: Ja. So I do not think that she should be prejudiced in any way other than that she could have come to sit here while Mr Mogashoa was giving evidence. She would not be allowed to cross-examine him because she has not applied for Leave to Cross-examine. All she would do is just listen and she will be able to read all the evidence in the transcript. Ja.

ADV SONI SC: The...

20 **CHAIRPERSON:** So I just thought I must clarify that the decision did not come from you. It came from me.

ADV SONI SC: As it pleases Chairperson.

CHAIRPERSON: Ja. Okay alright.

ADV SONI SC: May we have the witness sworn in?

CHAIRPERSON: Yes please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR MOGASHOA: Madimpe Thabo Josias Mogashoa.

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

MR MOGASHOA: No.

REGISTRAR: Do you solemnly affirm that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, I truly affirm.

10 **MR MOGASHOA:** I truly affirm.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you very much you may be seated.

ADV SONI SC: Mr Mogashoa it is common cause that you are an attorney and that you have acted for PRASA in certain matters. I am just placing that on record.

MR MOGASHOA: Yes.

ADV SONI SC: In relation to the evidence you are about to give today have you made an affidavit?

MR MOGASHOA: Yes I have Chair.

20 **ADV SONI SC:** Have you that affidavit in front of you?

MR MOGASHOA: Yes it is in front of me.

ADV SONI SC: Chairperson the affidavit is in Bundle G it is marked Exhibit SS13 and it starts on page 1 Chairperson.

CHAIRPERSON: So the bundle is?

ADV SONI SC: G.

CHAIRPERSON: Bundle G.

ADV SONI SC: Yes.

CHAIRPERSON: And ...

ADV SONI SC: Exhibit SS13 it is the first...

CHAIRPERSON: Yes.

ADV SONI SC: Document in that bundle Chairperson.

CHAIRPERSON: Yes and you would like Mr Mogashoa's affidavit to be admitted as Exhibit

10 **ADV SONI SC:** SS13.

CHAIRPERSON: SS13.

ADV SONI SC: As you please Chair.

CHAIRPERSON: That affidavit of Mr Mogashoa does it appear on page 1 and goes up to page 19 if you look at the red numbers on the top right-hand corner of the pages?

MR MOGASHOA: That is correct Chair.

CHAIRPERSON: Yes and that signature is your signature above the certification?

MR MOGASHOA: It is my signature Chair.

20 **CHAIRPERSON:** Yes thank you. Mr Mogashoa's affidavit is admitted as Exhibit SS13.

ADV SONI SC: As you please Chair. Mr Mogashoa could you very briefly tell the Chairperson how it came about that you made this affidavit – just very briefly.

MR MOGASHOA: Okay Chair I received a call...

CHAIRPERSON: I am sorry Mr Mogashoa please bring the microphone a little closer to you.

MR MOGASHOA: This way?

CHAIRPERSON: Yes I do not know if it moves. If it moves I want it to be a little closer even than that or maybe move your chair.

MR MOGASHOA: Okay.

CHAIRPERSON: I hear better when it is not too far away from you.

10 **MR MOGASHOA:** Okay Chair.

CHAIRPERSON: Hm.

MR MOGASHOA: I received a call it must have been around April of this year from – from Ms Rangata who indicated that in the proceedings officials of PRASA came through to the commission to give their evidence in particular in relation to some of the matters that my firm Diale Mogashoa Attorneys just that Diale Mogashoa Attorneys was involved in and that they were particular matters in relation to the Siyaya what I see is referred to
20 as the Siyaya Group of Companies. She then asked that it is only courtesy that she requests that I assist by making my own affidavit available. I was subsequent to that given a copy of Ms Ngoye's affidavit and I think at that time she was either still testifying or had just finished testifying but what I was given was a copy of her affidavit. I am made to

believe that it forms part of the documents I might be talking to this morning. And – and I then received a letter from the commission explaining precisely what was needed from me and the firm I am part of and because the last time I was involved in the matters was way back in 2017/2018. I kept on indicating to Ms Rangata that I did it more times because I had to plough through documents most of which we have already archived. But in hindsight to the question Chair that is how I got to eventually formulate and settle
10 this affidavit that is before us now.

ADV SONI SC: Now in regard to the contents of your affidavit was the commission legal team or anybody from the commission involved in formulation of your affidavit?

MR MOGASHOA: I formulated and settled the affidavit myself Chair.

ADV SONI SC: Now in your affidavit you refer to the affidavits by two PRASA officials Ms Ngoye whom you have mentioned and was there a second person whose affidavit you have received?

20 **MR MOGASHOA:** I received the affidavit of Ms Ngoye initially when I was approached to be of assistance to the commission. And I think subsequent to that but before I could settle the affidavit as requested, I was given the affidavit of Mr Dingiswayo. I believe at that time Mr Dingiswayo had not come through to the commission to

give his evidence Chair. I – I may have been placed in possession of Ms Ngoye's transcript but I have not seen Mr Dingiswayo. But I believe he has given his evidence. So I was in possession of the two affidavits at the time of formulating this affidavit.

ADV SONI SC: Now in their affidavits – did you read the affidavits that were given to you?

MR MOGASHOA: I went through both affidavits that were given to me.

10 **ADV SONI SC:** In their affidavits they mention their interactions with you and your firm and your interactions with PRASA in relation to the Siyaya matters. Just in general what is your – what is your response to the averments made in their respective applications insofar as it concerns you and your firm?

MR MOGASHOA: Okay. Let me start by explaining that I understand the – the – and I understood at the time I was asked to prepare an affidavit the role that I had to fulfil by offering explanations which Ms Ngoye and Mr Dingiswayo
20 may not have had enough information around.

As my affidavit says and in the normal ordinary course of accepting instructions from PRASA Chair which we acted for I received I think during the period of 2015 it must have been around September I could be wrong but the dates are in my affidavit.

I received about four summonses all by different companies which I see we refer to as the Siyaya Group and all of which were in respect of claims by the Siyaya Group against PRASA purportedly as a result of services rendered through a variety of contracts or agreements that PRASA and Siyaya may have gotten themselves involved in and I believe that in the beginning of 2016 the year that followed I was then instructed on two more – to defend two more of such summonses by entities that are perhaps part of what
10 we call the Siyaya Group now.

Now my instructions Chair were that our firm should defend PRASA in as far as the summonses were concerned. I recall very well that during 2015 just after we had entered appearance to defend in respect of the 2015 case numbers which I speak of in my affidavits our opponents and I think my – my opponent colleague was Mr Mathopo of Mathopo Attorneys they – he represented the Siyaya Group of Companies. They immediately proceeded to file an application for summary judgment in respect of
20 all of the matters.

Now naturally through consultations with – with client it came out that client had a basis to want to defend those four matters at the time and that is what the legal team which our firm was a part of carried on to them file opposing papers in – in the defence of PRASA and in

illustrating to the court at the time that PRASA had bona fide defences to – to defend the matters. I suppose it is on record now that the summary judgment applications were – were successfully opposed and then the parties then went on to litigate as for instance I may have been instructed by our client to litigate in the manner that we did through the various stages of such litigation.

And I think in 2016 when we received the two additional summonses, we went on to file our appearances
10 to defend as instructed and my opponent I think in this – in this case did not go on to file applications for summary – for summary judgment in respect of such matters. And we then went on to exchange pleadings and one can accept that in that respect there would have had to be many, many occasions during which my firm would consult with PRASA and PRASA officials and I think in particular it would be Mr Ngoye, Mr Dingiswayo and Ms Mokothini [?]. I received – I had received all of these instructions from Ms Mokothini [?] through I believe Mr Dingiswayo's instructions.

20 And the process of dealing with the litigated matters it became apparent that the contracts that opponents relied upon made reference to arbitration as one way of having the matter adjudicated upon. And I think the parties at some point during 2016 or 2017 agreed to then have the matters referred for arbitration.

My affidavit speaks about all processes thereabout and I think Ms Ngoye's affidavit speaks about such processes thereabout and the parties agreed after obviously some – some bit of tiffing and toying about who the suitable arbitrator would be. We eventually agreed on – on instructing retired Judge Fritz Brand.

I recall that we subsequently had a pre-trial – pre-arbitration meeting with Judge Fritz at which we then agreed on the many various steps that the parties would
10 follow in preparing matters at the arbitration hearing. And if my memory serves me well, we had intended to sit around certain dates of September of 2017 so that we argue the cases as pleaded in the numerous documents that we had at our disposal.

CHAIRPERSON: Mr Soni, quickly. Important to let him talk to each plan to say what was it about and, I mean, the question of their defence is in the public domain because please were filed as I understand the position.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** What the defence was or defences were. What... how much was claimed? What was the claim for? What was the defence of PRASA? Just briefly.

ADV SONI SC: Yes.

CHAIRPERSON: At some stage.

ADV SONI SC: I will do that in a moment because he does...

there is a report from **Mr Makgahlela(?) [00:02:25]** which I want to deal with him in that regard Chairperson.

CHAIRPERSON: Ja, but it is important as, whoever is listening, as they follow, they know what claim you are talking about.

ADV SONI SC: Ja. yes.

CHAIRPERSON: It is easy for all three of us because we know, we have read this. But somebody who is listening does not know what are these claims for, and if we go too far
10 without explaining them, they are disadvantaged.

ADV SONI SC: I just wanted to cover a former issue.

CHAIRPERSON: Yes. No, that is fine.

ADV SONI SC: Mr Mogashoa, the question I had asked you, where you gave the history of the matter was, did you read Ms Ngoye's and Mr Dingiswayo's affidavits?

They make a number of allegations. And I am just asking, are you in agreement with those allegations they are making in their affidavits or do you disagree with them? Just in general.

20 **MR MOGASHOA:** Chair, there will be certain aspects of their affidavit or their affidavits that I disagree with. And I do state that very clearly. In my own affidavit where ...[intervenes]

CHAIRPERSON: Where you are...[intervenes]

MR MOGASHOA: ...I can...[intervenes]

CHAIRPERSON: Ja.

MR MOGASHOA: ...not quite capture the facts of the matter.

CHAIRPERSON: Yes.

MR MOGASHOA: ...in line with what I know the facts to be. So every aspect of their affidavits that deviated from what I know about these matters, I would have dealt with it. I would have had to deal with...[intervenes]

CHAIRPERSON: So I think your answer ...[intervenes]

MR MOGASHOA: ...[intervenes]

10 **CHAIRPERSON:** I think your answer Mr Mogashoa should be. Your attitude towards... to the allegations made in Ms Ngoye's affidavit is as reflected in the affidavit because they deal with that.

Those that you admit, you made that clear where you think it is not... it does not give the full picture as you understand it. You have also dealt with that. Is that right?

MR MOGASHOA: That is correct Chair.

CHAIRPERSON: Ja. And then Mr Soni can take you to those if it is necessary.

20 **ADV SONI SC:** Can I just ask you to look at paragraph 7 of your affidavit Mr Mogashoa?

CHAIRPERSON: What paragraph?

ADV SONI SC: Paragraph 7 on page 3 Chairperson.

CHAIRPERSON: Okay.

ADV SONI SC: You say in the first sentence:

“I had an opportunity to consider the affidavits of Ms Ngoye and Mr Dingiswayo, as well as, the documents in the group...”

And then, just read the second sentence, please.

MR MOGASHOA:

“I confirm that the averments contained in these affidavits are a correct recollection of the events that took place except where I otherwise in this affidavit proffered a better clarity and/or put issues into their proper perspective in areas where our firm’s involvement was concerned...”

ADV SONI SC: Yes, and then if you look at paragraph 8. You make one point about an allegation made by Mr Dingiswayo that the settlement that had been concluded in December 2017, was a secret settlement, and you say there was no secret settlement.

Is that the extent of your dispute between yourself and Ms Ngoye and Mr Dingiswayo except where something else appears in your affidavit?

20 **MR MOGASHOA:** Well, yes except where something else appears in my affidavit. I had to categorically state that the accession that the...

In as far as our firm was concerned, the accession that the settlement or the settlement processes were done secretly, I did not quite think that that would be correct in the

context of our firm's involvement in the matters.

CHAIRPERSON: To the extent that when Mr Dingiswayo referred to a secret settlement or anything along those lines, to the extent that he may have meant that it was a settlement in which the legal department of PRASA of which he was part, had not taken part or had been excluded. Would you be able to comment on that?

MR MOGASHOA: I would except that proposition Chair if he means it in a sense that perhaps the legal department was
10 not aware ...[intervenes]

CHAIRPERSON: Yes.

MR MOGASHOA: ...about what was happening
...[intervenes]

CHAIRPERSON: Yes.

MR MOGASHOA: ...about the settlement at the time.

CHAIRPERSON: Yes.

MR MOGASHOA: I do not have a problem with that proposition.

CHAIRPERSON: Ja, okay.

20 **ADV SONI SC:** I am going to come back to that Chairperson. I do not want to be asking leading questions.

CHAIRPERSON: That is fine.

ADV SONI SC: But that is an important issue.

CHAIRPERSON: Ja. Yes, that is fine.

ADV SONI SC: Now, in regard to the six matters that you

have mentioned Mr Mogashoa. Did you, at any stage, do a report for PRASA?

MR MOGASHOA: You mean in the ordinary... I just want clarity on your question. You mean in the ordinary course of dealing with the matters or the dealing with the litigation ...[intervenes]

ADV SONI SC: Can I ask you ...[intervenes]

MR MOGASHOA: ...as the case may be?

ADV SONI SC: Can I ask you to please look at Annexure
10 MN4, to Ms Ngoye's affidavit, please? Ms Ngoye's affidavit
Chairperson is in Bundle E1, Exhibit SS7B.

CHAIRPERSON: H'm.

MR MOGASHOA: At which page or what page?

ADV SONI SC: If you look at page 322. That is MN4.

MR MOGASHOA: I have it in front of me.

ADV SONI SC: Now what is that document?

MR MOGASHOA: This is a report compiled by our office.

ADV SONI SC: From whom of your office?

MR MOGASHOA: I prepared the report with my colleague,
20 Ncebakazi Mbebe.

ADV SONI SC: What is that report about?

MR MOGASHOA: We were, prior to this date, requested by the legal department to prepare a status report in respect of all of the matters our firm was defending to PRASA at that time.

I think in my discussions with Ms Ngoye or Mr Dingiswayo, I was made to believe that the board wanted to have a quick update on the status of the litigation of the matters related to the Siyaya Group.

And in that way, we then... Ms Mbebe and I then prepared... went on to prepare this report. I have it dated the 21st of November 2017.

ADV SONI SC: Yes. Now let us just put this into perspective. This is a report you prepared for PRASA.

10 Would that be correct?

MR MOGASHOA: That is correct.

ADV SONI SC: Right. And what you say is that:

“The purpose is to provide the client with an update on the background of the Siyaya summons, our office has been instructed to defend...”

That is at paragraph 1.2.

MR MOGASHOA: That is correct.

ADV SONI SC: Now in the rest of document, you then outlined each of the cases. Would that be correct?

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

ADV SONI SC: Okay. Now let us look at the first one which... Chairperson, this is answering your question about what the plan is about and so on.

CHAIRPERSON: H'm.

ADV SONI SC: Look at the one at paragraph 2.1 on page

322. What case number is that?

MR MOGASHOA: The report then refers to a matter with case number 73/934/2015.

ADV SONI SC: And who was the claimant in the matter or the plaintiff?

MR MOGASHOA: The plaintiff then is Siyaya DB Consulting Engineers (Pty) Ltd.

ADV SONI SC: Yes.

MR MOGASHOA: And, obviously, it was a summons against
10 PRASA.

ADV SONI SC: And at paragraph 2.1.2, you indicate the basis on which that claim is... the claim is founded. Can you just indicate what that was for? What the basis was? That is set out in paragraph 2.1.2.

MR MOGASHOA: Correct. We say in our report Chair that:

20 “The plaintiff alleges in his particulars of claim dated the 9th of December 2015 that on or about the 8th of September 2014 at Braamfontein, Johannesburg, the plaintiff who was presented by its managing director, Makhensa Mabunda and the defendant represented by its group CEO, Lucky Tshepo Montana, concluded a written Consultant Agreement for the PRASA Rail Infrastructure Rehabilitation Programme Phase 2...”

ADV SONI SC: And in that paragraph 5.1... I am sorry. At

paragraph 2.1.3, you indicate what the contract price was.

MR MOGASHOA: Correct.

ADV SONI SC: And what was the contract price?

MR MOGASHOA: Our paragraph 5.1 of the report says:

“The contract price was R 28 819 200,00 inclusive of VAT...”

And I think we cross-referenced to Clause 1.11 of, I imagine, whatever agreement or document that was attached to the summons.

10 **ADV SONI SC**: Okay. Now, can I ask you to look at page 324? And in paragraph 2.1.9, you set out the first defence that had been raised. What was that defence? Just very briefly. You do not have to read it.

MR MOGASHOA: That is paragraph 2.1.9. I see here that I am making reference to it. It mentions that it has to do with jurisdiction.

ADV SONI SC: Yes.

MR MOGASHOA: I am do not know if that is what you are referring to?

20 **ADV SONI SC**: Yes. I am just trying to articulate what the issues were in this matter. There is a claim and you indicated that you had said to PRASA that these claims are defensible and we just looking at the basis on which the claims were being defended.

CHAIRPERSON: Yes, and you deal with those at 2.1.9,

2.1.10, 2.1.11.

MR MOGASHOA: Correct. That is indeed so.

CHAIRPERSON: Ja, just articulate them, the defences.

MR MOGASHOA: Oh, okay.

CHAIRPERSON: Ja.

MR MOGASHOA: I mean it to look at them ...[intervenes]

CHAIRPERSON: You can ...[intervenes]

MR MOGASHOA: ...without reading Chair.

CHAIRPERSON: You can read these ones. Ja, okay.

10 Because ...[intervenes]

MR MOGASHOA: Yes, must I read it into the record?

CHAIRPERSON: Into the record, ja.

MR MOGASHOA: Oh, it is fine. We say in paragraph 2.1.9
that:

20 “The amended plea raised the issue of jurisdiction in
that Clause 20 of the agreement, upon which the
plaintiff relies, a court provides that disputes
between parties must be fair to arbitration and that
the person in dispute had not been referred to
arbitration...”

ADV SONI SC: If you could just stop there for a moment?

MR MOGASHOA: Yes.

ADV SONI SC: When you were summarising the
developments in this matter, you indicated to the
Chairperson that matters had been filed in court. And then

you indicated that eventually the matters were referred to Judge Brand as the arbitrator.

MR MOGASHOA: That is correct.

ADV SONI SC: Was the appointment of Judge Brand connected with this defence?

MR MOGASHOA: It will be connected with this defence but I imagine that at that time the parties had not gotten into an arrangement that the matters be referred for arbitration.

CHAIRPERSON: This must be a point that you had raised
10 when the matter was still in court and you must have raised it successfully, even if it was not decided by the court ...[intervenes]

MR MOGASHOA: I would agree.

CHAIRPERSON: ...successfully in the sense that the plaintiff agreed that they should not have gone to court. They should have referred the dispute to arbitration.

MR MOGASHOA: Yes, indeed so Chair. It would be. And we say there that it was included in our amended plea that there were jurisdictional issues in the sense that the matters
20 ought to have been referred for arbitration instead of the institution of an action ...[intervenes]

CHAIRPERSON: Ja.

MR MOGASHOA: ...proceedings out of the high court.

CHAIRPERSON: H'm. Well, was that point common to all the Siyaya claims that ultimately got settled or only in regard

to this matter, as you recall it?

MR MOGASHOA: We agreed to have all of the disputed matters go for arbitration. So in the agreement, it may even be so that not all of them had to be referred for arbitration.

CHAIRPERSON: Yes.

MR MOGASHOA: But I think when we were discussing all of them with ...[intervenes]

CHAIRPERSON: [Indistinct]

MR MOGASHOA: ...with our accountants and my opponent
10 on the other side.

CHAIRPERSON: Ja.

MR MOGASHOA: We then arrived at the conclusion but because they are similar and they rely on agreements effectively entered into between PRASA and the Group of Siyaya Companies, that it would serve justice better that we then refer all of them for arbitration.

So, yes Chair, in answer to your question. There was an agreement to also refer the so-called settled matters for arbitration at that time.

20 **CHAIRPERSON:** H'm. Maybe you can ...[intervenes]

ADV SONI SC: I... then in answer... I will go through all of them.

CHAIRPERSON: Yes.

ADV SONI SC: But the answer to the question Chairperson without leading the witness, that is indeed the position that

the jurisdictional point was taken in respect of all the claims.

CHAIRPERSON: H'm. Okay you are away from the mic.

ADV SONI SC: Oh, I am sorry.

CHAIRPERSON: As a result, I cannot hear.

ADV SONI SC: Yes, sorry Chair.

CHAIRPERSON: Yes. I did not hear. Just repeat the point.

ADV SONI SC: Oh. The jurisdiction of point was taken in regard to all six claims.

CHAIRPERSON: All six claims?

10 **ADV SONI SC:** Yes.

CHAIRPERSON: Oh, okay. Thank you.

ADV SONI SC: Alright. Then, Mr Mogashoa, if you look at paragraph 2.1.10, you indicate what the fitting defence was in the plea that had been filed in the high court. What is that defence?

MR MOGASHOA: Correctly. We say in paragraph 2.1.10 that:

20 "The second defence raised in the plea is that the services indicated to have been rendered on the invoices upon which the 20 July's are not of any of the services listed in the Annexure BOC or POC3. In other words, the claimant claimed for about under these summons, are not authorised by the Consultant's Agreement upon which the plaintiff relies and on that basis, the defendant is not liable to

the plaintiff on such amounts...”

CHAIRPERSON: So, just to clarify that. Would it be correct to say that PRASA’s defence in relation to this claim, as reflected in paragraph 2.1.10, was that Siyaya may have performed those services but those were not services that PRASA had asked Siyaya to perform?

MR MOGASHOA: Indeed so Chair.

CHAIRPERSON: Yes, and that ...[intervenes]

MR MOGASHOA: Yes.

10 **CHAIRPERSON:** ...Siyaya could not claim from PRASA payment for services that had not been agreed should be performed by Siyaya?

MR MOGASHOA: I... these things happened a long time ago Chair but I would imagine that... we had difficulties with the fact that what we came across as evidence of amounts that the Siyaya Group was saying were outstanding.

The invoices... not the invoices, articulated by way of services rendered, were not in consonance with the agreement and in particular Annexure POC3.

20 **CHAIRPERSON:** H’m-h’m.

MR MOGASHOA: So this may have been confirmed by our client during the various consultations they have had with them but they had challenges with those invoices as they did not seem to relate to any of the services as may have been described by this annexure to the agreement.

CHAIRPERSON: Okay.

ADV SONI SC: And then at paragraph 2.1.11, you articulate what the third defence was. Can you indicate to the Chairperson what that was, even if you just read paragraph 2.1.11 into the record?

MR MOGASHOA: Okay. We are saying Chair in paragraph 2.1.11 that:

10 “The third defence raised in the plea is that the plaintiff is not entitled (I would imagine) to interest because they did not demand payment of such various amounts on the date alleged in its particular of claim and therefore, they are not entitled to interest in effect from those dates...”

I imagine it would be the dates of the invoices themselves.

ADV SONI SC: Now, in paragraph 2.1.12, you refer to a further defence that was raised. Could you indicate what that defence was?

MR MOGASHOA: Chair, we say in paragraph 2.1.12 that:

20 “The defence also relied on Clause 11.1 of its Consultant’s Agreement to allege that the invoices upon which the 20th of July, are not in accordance with the payment schedule contemplated in Clause 11.1 of the consulted agreement due to the facts that the amounts claimed therein are not the amounts provided for the payment schedule contained in

Annexure B to the consulting settlement.

The premises insofar as amounts claimed by plaintiff are not in accordance with the amounts provided for in the payment schedule contained in Annexure B to the Consultant's Agreement.

The defendant pleads that the plaintiff is in law not entitled to claim such amounts in terms of the Consultant's Agreement and the defendant is, therefore, not liable to the plaintiff in terms of the Consultant's Agreement upon which the plaintiff relies..."

ADV SONI SC: And then in paragraph 2.1.13, you raise the... a further defence in respect of reciprocal obligations. Can you articulate what that defence was even if you just read it out?

MR MOGASHOA: Chair, in paragraph 2.1.13, we say that:

"The defence also relied on the fact that Clause 1.12.4 of the Consultant's Agreement created reciprocal obligations between the parties.

The clause provide that the plaintiff commits an event of default if he does not deliver a certificate of occupation within a period of 20-days from the completion date.

The plaintiff has not delivered the certificate of occupation referred to in Clause 1.12.4 of the

Consultant's agreement and it is for this reason to not, in the law, entitle to enforce the Consultant's Agreement against the defendant..."

ADV SONI SC: And then in 2.1.14, you raise an even further defence. What is that?

MR MOGASHOA: We say in 2.1.1.4 Chair that:

10 "The plea also contested the lawfulness of the variation of the Consultant's Agreement to the extent that it is not contemplated in Clause 23 of the agreement..."

ADV SONI SC: And in 2.1.15 indicates what your last plea to this claim was, and what was it?

MR MOGASHOA: We say there Chair that:

"Lastly, the plea dealt with the defendant's denial of the fact that the services the plaintiff alleges to have rendered are inconsonant with the services listed in POC of its particulars of claim..."

20 **ADV SONI SC:** Now, earlier on you indicate that the claims were not consonant with POC3. Was this a separate defence as well? Because here you have it as POC2.

MR MOGASHOA: I just want to read 2.1.5 again. We seem... my understanding of this paragraph is that we seem to also deny that the services rendered are in line with the services as may have been listed in Annexure POC2 of the particulars of claim.

ADV SONI SC: Yes. I am just going... if you look at paragraph 2.1.10 on the previous page.

MR MOGASHOA: Yes.

ADV SONI SC: You will see there is a reference to POC3. I am just saying that it appears as if there is... there were three sets of particulars of claim and that 2.1.10 referred to one and this referred to yet another.

MR MOGASHOA: I suppose you mean annexures?

ADV SONI SC: I am sorry. Annexures, yes.

10 **MR MOGASHOA:** Yes.

ADV SONI SC: Yes.

MR MOGASHOA: So, yes. So from the reading of my report, indeed there would have been POC annexures. And we seem to be saying, both the reliance on POC3 and POC2 were found to be one thing in our interpretation of the documents in the totality at that time.

ADV SONI SC: Mr Mogashoa, let me just try and understand. These defences were based upon on what? In other words, how did this... how did it come about that these
20 defences exist?

MR MOGASHOA: We would have had to consult.

ADV SONI SC: Well, you would have and I ...[intervenues]

MR MOGASHOA: We went on to arrange on many instances and occasions consultations with clients. Documents were made available to us.

Information was shared with us by members of the particular unit which unit would have received such services as may appear in the allegations in the particulars of claim.

So the defences were formulated as a result of consultations and as a result of documents that were availed to us as the legal team.

And naturally that which followed was that we repeated all of these defences in the plea as may have been amended that we filed on behalf of PRASA.

10 **ADV SONI SC:** Now, in regard to the drafting of the plea. This is a claim for R 27 million. Did you have counsel?

MR MOGASHOA: Yes, we had counsel. I think I do say in my affidavit that initially in 2015, we were instructed to brief Advocate Mike Maritz SC and with him Kenneth Solwane as his junior. I think it was up to the point we argued application for summary judgment.

But I think from then onwards, we were instructed to proceed with Advocate Solwane. I cannot remember if, at the time, his status had been deferred but we proceeded with
20 him and over time, we were instructed to get a junior
...[intervenes]

ADV SONI SC: I am just trying... Oh, sorry.

MR MOGASHOA: Ja. At the time of filing these pleas. Yes, Advocate Solwane and ...[indistinct] Basetti [00:29:30]

ADV SONI SC: I am just trying to find out whether counsel

drafted the pleas.

MR MOGASHOA: It would have been counsel who drafted the pleas. Correct.

ADV SONI SC: Alright. Then let us look at the next case which you set out at paragraph 2.2 of Annexure MN4, and what case number is that?

MR MOGASHOA: We say here it is case number 73933 of 2015.

ADV SONI SC: And who was the claimant in this matter?

10 **MR MOGASHOA:** The plaintiff in this matter is Siyaya DB consulting Engineers (Pty) Ltd v PRASA.

ADV SONI SC: And in paragraph 2.2.2 you indicate what the basis of this claim was. Could you read that into the record?

MR MOGASHOA:

20 “We summarise the plaintiff’s case to be that on or about the 4 December 2013 and at Braamfontein, Johannesburg, the plaintiff represented by its managing director Makhenza Mabunda and the defendant represented by its Chief Executive Officer and that [indistinct] 00.45 accelerated infrastructure refurbishment project consulting agreement.”

ADV SONI SC: It may – I am just asking, if you recall, who was the Chief Operating Officer? The defendant’s Chief

Operating Officer?

CHAIRPERSON: Chief Executive Officer.

ADV SONI SC: Chief Executive Officer, sorry.

MR MOGASHOA: In 2013 it may have still been Mr Lucky Montana. It may have still been [inaudible – speaking simultaneously]

CHAIRPERSON: Well, in 2013 it certainly would have been Mr Montana.

ADV SONI SC: Yes, yes.

10 **CHAIRPERSON:** Because he left in 2015, if I recall correctly or was it 2014? But in 2013 I am sure it was still him.

ADV SONI SC: Yes.

CHAIRPERSON: Ja.

ADV SONI SC: And if you look, Mr Mogashoa, if you turn to paragraph 2.1.2 it is on the previous page 323 and you look at paragraph 2.1.2 you do name the CEO there.

MR MOGASHOA: Yes, that is indeed so.

ADV SONI SC: And who is the CEO then?

20 **MR MOGASHOA:** It says Lucky Tshepo Montana.

ADV SONI SC: Yes.

MR MOGASHOA: And that is – that agreement was 2014 and the Chairperson is making the point that therefore in 2013 it must have been Mr Montana as well. I am just not whether we left information out, getting who the Chief

Executive Officer at the time was or that this is just a caption of what the particulars then say.

ADV SONI SC: If you look at the next – the first line of the next page, that is page 326 and that is your paragraph 2.2.3, you indicate what the purchase price – oh sorry, the contract price of this contract was. What was it?

MR MOGASHOA: You see there the contract price was R4 978 000 inclusive of VAT, Chair.

ADV SONI SC: And then from paragraph 2.2.8 on page
10 327 you indicate the basis on which the plea was founded
and what is 2.2.8?

MR MOGASHOA: Chair, we say in paragraph 2.2.8 that:

“The amended plea raised the issue of jurisdiction in that clause 19 of the agreement upon which plaintiff relies, provide that disputes between parties must be referred to arbitration and that the present dispute had not been referred to arbitration.”

ADV SONI SC: This is the point that the Chairperson was
20 asking about, did all the contra – was the same jurisdiction
or point taken in respect of all the contracts? Certainly, it
was taken in respect of this contract as well.

MR MOGASHOA: Indeed so, Chair. If the report confirms that because, I mean, the report was done when we still – when our firm was still seized with the responsibility of

defending the matter [inaudible – speaking simultaneously]

ADV SONI SC: Because at the time you drew up this report you would have had everything.

MR MOGASHOA: We had everything in front of this, correct.

ADV SONI SC: Now 2.2.9 you indicate a further defence, what was that defence?

MR MOGASHOA: We say there that:

10 “The defendant also denied that the agreement was entered into by its Chief Executive Officer and as well the correctness of clause 3.2 of the agreement.”

ADV SONI SC: And in 2.2.10 ...[intervenes]

CHAIRPERSON: I am sorry.

ADV SONI SC: I am sorry, Chair.

CHAIRPERSON: On 2.2.9 is that defence one that disputed the validity of the agreement that was entered into by PRASA’s Chief Executive Officer at the time or was the defence that factually no agreement existed. Do you
20 remember? Is that something you are not able to remember?

MR MOGASHOA: I cannot quite remember, Chair, but just to assist. If I give regard to paragraph 2.2.9, we either did not have an agreement at all or, alternatively, we had an agreement that did not bear any signature of the Chief

Executive Officer and/or any other official from PRASA who may have been mandated to enter into such an agreement. So we disputed the existence of the agreement from my review of 2.2.9.

CHAIRPERSON: Yes, okay.

ADV SONI SC: As it pleases. And in 2.2.10 you raise a further defence and what was that?

CHAIRPERSON: We say there that:

10 “The plea also alleges that the defendant is not liable to the plaintiff due to the fact that the plaintiff failed to provide an occupation certificate as contemplated in clause 1.11 on the agreement.”

ADV SONI SC: Okay. And 2.2.11? What is the defence raised there?

MR MOGASHOA: We are saying there that:

20 “The defendant disputed its liability to the plaintiff in that the invoices upon which the plaintiff rely are not consistent with the provisions of clause 2 of annexure B to the agreement in that they do not set out the work for which amounts are claimed, they are not for any of the amounts listed in clause 2.1 of annexure B to the agreement. They are not for 25% off the contract price as provided for in clause 2.2 of annexure B to the agreement and they are not accompanied by deliverables

described for each of the invoices provided for in clause 2.2 of annexure B of the agreement.”

ADV SONI SC: And then in 2.2.12 a further defence is raised. What is that?

MR MOGASHOA: We say there that:

“The defendant also denied that the plaintiff rendered the services provided for in clause 8 of the agreement read with Schedule A of the agreement.”

10 **ADV SONI SC:** This seems to be similar to the plea in the – or the defence raised in the previous one namely that the annexure PLC 2 and PLC 3 do not bear out the claims that were made by the plaintiff.

MR MOGASHOA: That is correct.

ADV SONI SC: And then in 2.2.13?

MR MOGASHOA: We say there that:

20 “The defendant also challenges the plaintiff’s claim that it is entitled to interest as at 25 March 2015 as no case had been made in the particulars of claim for the interest to be paid with effect from that date.”

ADV SONI SC: And that is similar to the defence you raised in the previous claim, would that be correct?

MR MOGASHOA: In the previous case, that is correct.

ADV SONI SC: And then in paragraph 2.3 you deal with

the next claim that was made and would you in paragraph 2.3.2 you indicate what the basis of that claim was?

MR MOGASHOA: We say there that it is case 74281/2015 and it is Siyaya DB Consulting Engineers (Pty) Ltd v PRASA. In paragraph 2.3.2 of the report you say that:

10 “The plaintiff in the particulars of claim dated 09 September 2015 alleges that during or about 4 March 2013 at Braamfontein, Johannesburg, the plaintiff represented by its managing director Mr Makhensa Mabunda and the defendant represented by Dr Daniel Mthimkulu head of PRASA Engineering Services concluded an oral agreement, he is saying that is the material management and [indistinct] 10.10 agreement.”

ADV SONI SC: Now you say that that was an oral agreement – well, that is what it was alleged.

MR MOGASHOA: That is what is pleaded in the particulars of claim.

20 **ADV SONI SC:** Yes. What was the amount that is claimed – and I think you will find it at paragraph 2.3.6 on page 329.

MR MOGASHOA:

“The plaintiff alleges that the defendant is indebted to the sum of R70 628 118.59.”

ADV SONI SC: Now in regard to the amount of the claim, the particulars of claim alleged that there was a R17 million contract concluded by an organ of state of the basis of an oral agreement.

MR MOGASHOA: That is what the particulars of claim said.

ADV SONI SC: Then if you look at your defences, they start at 2.3.10, could you indicate what those defences are?

10 **MR MOGASHOA:** Chair, I am saying on paragraph 2.3.10 that:

20 “The plea denied the conclusion of the alleged oral agreement between plaintiff and its representatives. In the alternative, it is alleged that Mthimkulu was not duly authorised by the defendant to conclude the agreement on behalf of defendant. The defendant did not at any time represent the plaintiff that Mthimkulu was authorised to conclude the agreement on its behalf. The defendant is in law not bound by the agreement and the agreement is in law not enforceable against it and the plaintiff ought to have attached to its particulars of claim written part of the agreement and its failure to do so is prejudicial to the formulation of the defendant’s

defence.”

ADV SONI SC: Before we go on with the rest of the defences may I make or raise this with you, the Chairperson had earlier asked you whether the question of the jurisdictional point was taken in respect of all the claims. Why could it not be taken in respect of this claim?

MR MOGASHOA: I imagine it is because there was no agreement to refer to wherein such a clause existed that in the event of dispute the matter be referred for
10 arbitration.

ADV SONI SC: Which made it different from the other written agreement.

MR MOGASHOA: I imagine – ja, indeed so, this would be different from the others.

ADV SONI SC: Alright, then in 2.3.11 you raise a further -
- I mean, a further defence is raised and what is that?

MR MOGASHOA: I am saying there that:

20 “In addition the defendant pleaded that project charter attached to PMC1 of the amended particulars of claim was not prepared by it but no agreement was reached between the parties of getting extensions but plaintiff had no capacity and skills to render the services indicated therein and that plaintiff did not render any of the services for which payment is claimed.

ADV SONI SC: Right and then in 2.3.12 – Chairperson, sorry, may I indicate, I understand it is teatime, I am just wondering if I should not finish this and then we could break for tea.

CHAIRPERSON: Oh, okay, alright.

ADV SONI SC: It is just another few clauses.

CHAIRPERSON: Okay.

ADV SONI SC: 2.3.12.

MR MOGASHOA: In 2.3.12 I say that:

10 “The defendant also admitted receipt of the plaintiff’s invoices but pleaded that the plaintiff did not render services for which the invoices were rendered and that plaintiff did not deliver the deliverables contemplated in invoices. It is pleaded further that some of the invoices submitted by the plaintiff do not fall under any of what the plaintiff alleges was the scope of works that is contemplated in POC1 and POC2.”

20 **ADV SONI SC:** Now this again harks back to what was said in respect of two other claims, in other words there is a disjuncture between the claim and the annexures that the plaintiff had relied on.

MR MOGASHOA: That is indeed so.

ADV SONI SC: Those are the defences in regard to this claim. Mr Chairperson maybe this would be the [indistinct – dropping voice]

CHAIRPERSON: Yes, I understood you to say you wanted to just wrap up the one before we ...[intervenes]

ADV SONI SC: Oh, those were the two.

CHAIRPERSON: Ja before we take the adjournment.

ADV SONI SC: There are no more...

CHAIRPERSON: I thought let us take the tea adjournment
10 and when you come back you finalise the remaining claims if you have not covered all the ones you wanted to cover.

ADV SONI SC: I thought we would cover all the claims, Chairperson. It has an importance in relation to the fact that an agreement was reached.

CHAIRPERSON: No, no, that is fine, we will – all I am saying is, let us take the tea break now.

ADV SONI SC: Yes, yes, Chairperson.

CHAIRPERSON: And when we come back you can continue.

20 **ADV SONI SC:** No, [indistinct – dropping voice and recording distorted]

CHAIRPERSON: Ja, ja. We will adjourn for tea now and it is twenty minutes past eleven. We will resume at twenty to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Switch on your mic.

ADV SONI SC: Mr Mogashoa we were on, we just finished the third, the defences to the third claim you will recall before the tea interval. Mr Mogashoa?

MR MOGASHOA: Yes, I do recall.

ADV SONI SC: We go to the fourth claim which is reflected at paragraph 2.4 of MM4 which is your report on the Siyaya matters as at page 330.

10 **MR MOGASHOA:** Okay, I am on it.

ADV SONI SC: What case number was this?

MR MOGASHOA: We have got case number 47598 of 2016.

ADV SONI SC: And who was the plaintiff or claimant in that matter?

MR MOGASHOA: It says here that the plaintiff is Siyaya DB Consulting Engineers Ltd against PRASA.

ADV SONI SC: And what was the claim in respect of if you look at paragraph 2.4.2 of your report?

20 **MR MOGASHOA:** We say there that the summary of their claim is that on the 31st of March 2011 at Braamfontein, Johannesburg. The plaintiff DB International GMBH and the defendant concluded a written memorandum of understanding in terms of where they agreed to cooperate according to the terms of the MOU in the field of integrated

passenger and railway operations on the basis of the specific agreements for the benefit of the parties in order to improve various initiatives of taking current strategy cooperation in the following projects.

ADV SONI SC: Yes and in – now that is an MOU and then at 2.4.3 you indicate more specifically what the claim was based on.

MR MOGASHOA: We say there that the plaintiff alleges further that pursuant the conclusion of the MOU the parties
10 entered into a written agreement on the 30th of July 2013 with the plaintiff dually represented by Miss Zolani Vuma and the defendant represented by Mr Lucky Montana.

ADV SONI SC: Alright then you set out the defences which start at paragraph 2.4.8 on page 331.

MR MOGASHOA: Yes, we then state in our paragraph 2.4.8 Chair that the defendant's plea indicated that in the light of the fact that the validity period of the consultancy agreement between the plaintiff and the defendant commenced on 15 July 2015. It follows that such validity
20 period came to an end by no later than 28 February 2014. In the premise there was no longer an agreement between the plaintiff and the defendant in terms of which the plaintiff could lawfully render service to the defendant and in terms of which the defendant would be obliged to make payment. To – I am sure he wanted to say to the plaintiff.

Due to the fact that the consultancy agreement upon which the plaintiff realised had come to an end by affliction of time by no later than 28 February 2014. Accordingly, the defendant is not – in terms of the consultancy agreement upon which the plaintiff realised liable to the plaintiff for any services allegedly rendered by the plaintiff after 28 February 2014 or for damages claimed in this proceedings.

ADV SONI SC: Right then you raised three other defences there in paragraph 2.4.9, 2.4.10 and 2.4.11.

10 What are those?

MR MOGASHOA: We – in those paragraphs say that the first one the plea also denies that the plaintiff ever carried out additional scope of work which was not contemplated in the consultancy agreement upon which plaintiff realised. Alternatively, that the work that the plaintiff alleges to have carried out was authorised by the defendant. The defendant also denies that the plaintiff ever presented a concept design to the depot steering committee. Secondly, we say that the plaintiff also raised a defence that by the

20 time the motivations referred to in the plaintiff's motivations plan was submitted. The term from the consultancy agreement had lapsed and that it was no longer competent for the plaintiff to submit a motivation/variation orders. And lastly we say that the plea also alleges that the plaintiff acted in an unreasonable

and negligent manner in believing that the services were rendered as contemplated in the consultancy agreement in that the variation orders were not authorised by the defendant and that plaintiff failed to realise that the consultancy agreement contract had lapsed.

ADV SONI SC: Then the fifth claim is reflected at paragraph 2.5, who was the claimant in that matter?

MR MOGASHOA: The claimant in that matter or the plaintiff is Siyaya Rail Solutions Pty Ltd against PRASA
10 and I see that the reports says that it is under case number 47597 of 2016.

ADV SONI SC: Yes and if you look at paragraph 2.5.5 then you will see what the amount of that claim is or the amount of the contract.

MR MOGASHOA: The paragraph states that further that the parties agreed that the plaintiff will render services to the defendant in terms of the aforementioned agreement whose contract price was an amount of R69million inclusive of VAT.

20 **ADV SONI SC:** And if you look at paragraph 2.5.8 that reflects that is on page 333 the amount of the claim, and what was that amount?

MR MOGASHOA: Sorry Chair, which paragraph?

ADV SONI SC: At paragraph 2.5.8 at the top of page 333.

MR MOGASHOA: Okay our paragraph says that it as a

result of this breach of agreement the plaintiff now claims that the defendant is indebted to it to an amount of R21 626 138.00

CHAIRPERSON: I am sure you meant alleged breach there.

MR MOGASHOA: Well yes Chair I am sure, I am sure it is repeated in other paragraphs that it is an allegation.

CHAIRPERSON: I am sure Siyaya would have been happy to see that you did not say alleged you said breached.

10 **MR MOGASHOA:** Yes.

CHAIRPERSON: Yes, Mr Soni.

ADV SONI SC: As you please Chairperson and then at paragraph 2.5.10 you set out the first leg of the defence or the first defence.

MR MOGASHOA: We say there that the defendant's plea disputed the fact that plaintiffs current claim is based on a consultancy agreement and same as therefore irrelevant for purposes of this proceedings.

20 **ADV SONI SC:** Alright and at 2.5.11 you raise a further defence.

MR MOGASHOA: We state there that the plea further denied the conclusion of the additional service agreement and in the alternative, we pleaded that in the event that it is found that the additional services agreement was concluded between the plaintiff and the defendant then in

that event the defendant pleads as follows. At the conclusion of the additional services agreement was not dually authorised by the defendant that Sonic Baltic was not dually authorised to conclude the additional services. Agreement that the defendant did not at any stage represent to the plaintiff that Sonic Baltic was dually authorised to conclude the additional services agreement referred to in paragraph 11 of the particulars of claim and lastly that the additional services agreement upon which
10 the plaintiff realised it is not valid and binding upon defendant and it is in law unenforceable against defendant due to the fact that its conclusion was not dually authorised by the defendant.

ADV SONI SC: And then at 2.5.12 you raised a further defence is set out, what is that?

MR MOGASHOA: We say there that the defendant also alleged that the contents of Annexure S3 of the plaintiff's particulars of claim does not indicate or suggest the alleged conclusion of a written agreement and that same
20 cannot be construed to constitute a written agreement.

ADV SONI SC: And paragraph 2.5.13?

MR MOGASHOA: We say there that the defendant's plea admits Age AC did not submit a variation order but defendant denies that same is linked to the alleged additional service agreement.

ADV SONI SC: And I think 2.5.14 and 15 you raised two further defences are raised, what are those?

MR MOGASHOA: We saying defendant also denied that the plaintiff ever submitted the report setting out services rendered and that the invoices submitted by the plaintiff were ever adequately explained to the plaintiff or by the plaintiff rather and we also say that the defendant denies that it made any representations relating to approvals authorisations and variations in relation to services
10 allegedly rendered by the plaintiff.

ADV SONI SC: Okay then the sixth claim is reflected at paragraph 2.6 but before I ask you to set out what that claim is can, I ask you please to look at paragraph 2.6.8 on page 334 in relation to that claim.

MR MOGASHOA: Yes, I see the paragraph.

ADV SONI SC: What does that say?

MR MOGASHOA: The paragraph says that on the 13th of April 2016 we received correspondence from our opponents who informed us that there client had been paid the full
20 amount that they were claiming and proposed that the defendant tenders a cost of the proceedings. We thereafter sought instructions from client to no avail.

ADV SONI SC: But effectively what was the effect of the fact that payment had been made?

MR MOGASHOA: The matter in as far as the litigation is

concerned was not proceeded with.

ADV SONI SC: In other words, it had become settled effectively.

MR MOGASHOA: It had become settled. I believed that at some point the client confirmed that position and we went on to close our file.

ADV SONI SC: Now Mr Mogashoa in – what was the purpose of your drawing up of this report?

CHAIRPERSON: Maybe before that it would appear that
10 in all of these claims Siyaya claims that you have covered
in all except one the plaintiff was the same namely Siyaya
DB and GBR Consultants Pty Ltd and the only one where
the plaintiff seems to have been a different legal entity
though also under Siyaya was the one called Siyaya Rail
Solutions Pty Ltd. Is my observation correct?

MR MOGASHOA: Correct it is indeed so.

CHAIRPERSON: Okay.

ADV SONI SC: So Mr Mogashoa what - to come back to
my question what was the purpose of this memorandum
20 report whatever one wants to call it?

MR MOGASHOA: We were instructed by the legal
department of PRASA to prepare the report and in my
understanding the board or the chairperson of the board
had called for it. But I remember we were told that there
was a need for us to urgently prepare a status report in

respect of all of the Siyaya matters that we - or our firm was defending

ADV SONI SC: Now based on this report and based on the defences that had been raised and having regard to the instructions you had received. What was your view you were the instructing attorney of the prospects of successfully defending these claims?

CHAIRPERSON: Before he answers if he is able to answer that it is fine I am just thinking that if you are
10 involved in the matter you might have discussions with your client and for whatever happens we might not want to tell other people what you told your client about the merits but if he feels comfortable that would be fine.

MR MOGASHOA: Yes.

CHAIRPERSON: Do you understand that?

MR MOGASHOA: Yes Chair.

CHAIRPERSON: And it may well be an opinion on the prospects maybe based on the legal department of PRASA what they took or on somebody independent other than the
20 person who was handling it but if he feels comfortable to answer the question there is no problem.

ADV SONI SC: Chairperson with respect here you have made a separate point that he is separately valid and that is we know as a fact that the claims have not been pursued since the Judge **Tuckt** ordered and it may be inappropriate.

CHAIRPERSON: Yes.

ADV SONI SC: So I would rather leave it.

CHAIRPERSON: Ja, okay no that is fine.

ADV SONI SC: Now this is the report that is dated the 21st of November 2017, is that correct Mr Mogashoa?

MR MOGASHOA: Correct that is the date of the report.

ADV SONI SC: Now let us go back to your affidavit which is SS13 in bundle G. After you submitted this report what happened?

10 **CHAIRPERSON:** Can I interrupt you again...[intervenes]

ADV SONI SC: Yes, Chairperson.

CHAIRPERSON: Mr Soni do not forget your question. I made a note in regard to this report Mr Mogashoa to the effect that it did not deal with the merits of the claims by which I meant it said nothing prospects of success. And I think at the beginning of the report there is a note you made towards along the lines that it should not be read as constituting your advice on the way forward or that kind of thing. Do you remember that note?

20 **MR MOGASHOA:** Would it be Chair on the first page of the report we just went through now?

CHAIRPERSON: Yes.

ADV SONI SC: If you look at paragraph 1.3 I think that is where we make the disclaimer there.

CHAIRPERSON: So I got the impression when I read that

part that you did not want it. Your intention was not to say anything about the prospects of success but it was just to say what has happened and where are we with regard to this litigation. Is that correct?

MR MOGASHOA: That is indeed so Chair but I think my paragraph 1.3 if you look at it, it invites client to call for such a report if they need a report.

CHAIRPERSON: If they need it, ja yes.

MR MOGASHOA: Correct.

10 **CHAIRPERSON:** I think the reason why I made that note may have been that I read somewhere and I do not know if it was that Makubela's document but I read somewhere I think where somebody said but the report does not deal with the prospects of success or the merits. And I went to look at the report and I picked that up that it did not deal with that but I think I only saw the note at the beginning of your report when Mr Soni was pointing it out earlier. So you did not intend in that report to express any view on the prospects of success but you expected client to approach
20 you if they wanted such an opinion.

MR MOGASHOA: Correct Chair I think the update report as I understood the instruction at the time was that I provide a status report on the nature of the claims and what our attitude as PRASA is towards them and I think this is precisely what I did. We all know as members of the

same profession how challenging such requests from clients are when you are expected to almost give some idea what the court would do with the case in as far as the merits are concerned. So I was to be comfortable about the information and evidence that is availed to us and advise of our clients that we are of the view that the defences would carry. And we were at that point prepared to follow through with that instructions to defend PRASA in all of this matters given the information available to us at
10 the time.

CHAIRPERSON: Okay.

ADV SONI SC: Now as I say this report is there to the 21st of November. You thereafter there is a report here dated the 28th of October.

MR MOGASHOA: Correct.

ADV SONI SC: Well before we get to that report what led to that report being prepared by yourself?

MR MOGASHOA: After we dispatched with the report that we have just gone through the 21st of November I think a
20 couple of days down the line I received a call and an email from Mr Dingiswayo which has attached what we now as a memorandum from the chairperson of the board in which there were certain enquiries that the Chair had put to I imagine process legal teal or legal department. And in respect of which Mr Dingiswayo request was that I

comment on the arrears of the memorandum that made reference or to our involvement in the matters. And I think this is firstly how I then considered the memorandum that as read to me and prepared the second report.

ADV SONI SC: But before we get to your second report let us look at the documents that you referred to that Mr Dingiswayo gave you. Have a look at MN6...[intervenes]

CHAIRPERSON: Of which bundle?

ADV SONI SC: Sorry there in Annexure 2 Miss Ngoye's
10 affidavit bundle E1 page 344.

MR MOGASHOA: Yes, I am on it.

ADV SONI SC: Is this the memorandum you talking about?

CHAIRPERSON: I am sorry at what page is it?

ADV SONI SC: Page 334 Chairperson.

CHAIRPERSON: On the same bundle?

ADV SONI SC: Of Miss Ngoye's...[intervenes]

CHAIRPERSON: E1?

ADV SONI SC: Yes, E1 yes Chairperson.

20 **CHAIRPERSON:** Yes.

MR MOGASHOA: If I am not mistaken, I may have attached what I received at that time and I am not sure if they are the same.

ADV SONI SC: Sorry, sorry I must apologise please look at MN5 not MN7.

CHAIRPERSON: What page is MN5?

ADV SONI SC: 338.

CHAIRPERSON: 338?

ADV SONI SC: Yes Chair.

ADV SONI SC: Is this the memorandum you received?

MR MOGASHOA: This is the memorandum I received. If you do not mind me checking I may have referred to the memorandum I just want to see.

ADV SONI SC: Yes, it is at paragraph 23 of your affidavit
10 Mr Mogashoa.

MR MOGASHOA: But I touch on it?

ADV SONI SC: No you did not.

MR MOGASHOA: Okay that is fine.

ADV SONI SC: You referred to MN5 in paragraph 23.

MR MOGASHOA: No then that is fine then this is the memo, yes.

ADV SONI SC: Now we do not have to go through the whole memo jut certain parts that I want to go through. Who is the memo addressed to?

20 **MR MOGASHOA:** It says here that it is addressed to the acting group chief executive officer Mr Zide.

ADV SONI SC: Yes, and from whom is it?

MR MOGASHOA: It says it is from the chairperson interim board advocated here in Makobelezi.

ADV SONI SC: And what is the date of the memo?

MR MOGASHOA: It says 28 November 2017.

ADV SONI SC: And what is the subject matter?

MR MOGASHOA: Siyaya Consulting Engineering Pty Ltd (liquidation) enquiry in terms of section 417 one and 418, 2 of the companies active to that we submitted.

ADV SONI SC: Now this is a report, this is the section 417 report that you refer to quite often in your affidavit. Would I be correct?

MR MOGASHOA: Well it may be so.

10 **ADV SONI SC:** I am not saying you I am saying the reference is made to it.

MR MOGASHOA: I have made reference to it.

ADV SONI SC: Now until today have you seen that report, the liquidation report?

MR MOGASHOA: You mean the report that is a subject matter?

ADV SONI SC: Yes.

MR MOGASHOA: No I was never placed in possession of a copy of that report. I knew it existed but ...[intervenes]

20 **CHAIRPERSON:** Face this side and do not be too far from your mic, because I cannot hear you when you are too far from the mic and certainly when you're looking away.

MR MOGASHOA: I am beginning to like Mr Soni better.

CHAIRPERSON: I see you are not the only witness who does that, I think a lot of witnesses like the evidence

leaders more than the Chairperson. Yes.

ADV SONI SC: I think they are more intimidated by you.

MR MOGASHOA: Thank you Chair. To answer the question, I have not seen the report up until today.

CHAIRPERSON: Okay.

ADV SONI SC: Now before we get to the report, and I just wanted to place it in context because that is the subject matter, this is addressed to Mr Zide, the memorandum from the Chairperson. In your preparation for the Siyaya please
10 and the developments thereafter, what communications did you have with Mr Zide?

MR MOGASHOA: I think at that point in time none whatsoever, I had been engaging with the legal department and I think in the beginning I said Ms Ngoye, Mr Dingiswayo and Ms Makwete.

ADV SONI SC: Those are the people with whom you dealt in regard to the Siyaya matters?

MR MOGASHOA: In regard to the Siyaya matters, correct.

ADV SONI SC: And as at the date of this memo had you
20 had any dealings with the Chairperson of the Interim Board, now Judge Makhubele?

MR MOGASHOA: When you say dealings are you referring to whether I ...[intervenes]

ADV SONI SC: Interactions, personal interactions.

MR MOGASHOA: Personal interactions, yes when she

was an advocate of the Pretoria Bar Council. I have had to work with her when I was at the previous law firm, I used to be a partner at Geldenhuys Malatji.

ADV SONI SC: But in regard to PRASA?

MR MOGASHOA: In regard to PRASA at this stage no, not at all.

ADV SONI SC: Alright. Now this memo was sent to you by Mr Dingiswayo.

MR MOGASHOA: Correct.

10 **ADV SONI SC:** Let's just have a look at what the memo says if you look at paragraph 1, you could just read that into the record.

MR MOGASHOA: The memo says that I referred to various ...[intervenes]

ADV SONI SC: Sorry, could you see and identify to whom it is addressed?

MR MOGASHOA: It is addressed to Mr Zide.

ADV SONI SC: But the memo then starts off with ...[intervenes]

20 **MR MOGASHOA:** Dear Mr Zide.

ADV SONI SC: Yes.

MR MOGASHOA: And paragraph 1 thereof says:

“I refer to various discussions between us about this matter as well as our brief discussion with the Group Executive : Legal Risk and Compliance, Ms

Martha Ngoye on 14 November 2017.”

ADV SONI SC: Then the next paragraph refers to your report which we have just been through, that is MN4, would that be correct?

MR MOGASHOA: Yes it refers to a – our report dated 21 November of 2017.

ADV SONI SC: Yes. And then she makes the point that Siyaya DB had been placed under liquidation. That is the last paragraph – the last sentence of that paragraph, would
10 that be correct?

MR MOGASHOA: Yes I am aware that in our course of dealing with the group some of the companies went into liquidation, and at that time, which is November 2017, yes we were fully aware as PRASA’s legal representatives that there were liquidation proceedings that were – or had been conducted.

ADV SONI SC: Ja, if you turn to paragraph 3 you will see what the Chairperson says about your firm’s role in it, just read that into the record please.

20 **MR MOGASHOA:** It says it is not clear from the report of Mogashoa Diale Attorneys whether they were subsequently appointed to present PRASA to deal with the liquidation matter. As acting Group CEO such instructions would have come from you.

ADV SONI SC: Well if we could just pause there for a

moment. Did you receive instructions from PRASA in regard to the liquidation matter?

MR MOGASHOA: Yes correct we did.

ADV SONI SC: Right and from whom in PRASA?

MR MOGASHOA: It would have been from legal either Mr – the three PRASA colleagues I have made reference to. Because they would instruct me interchangeable but when I communicate, I would communicate by – by to one and carbon copy the others. So I cannot quite remember who in particular gave me the instructions but the instruction came from either Ms Ngoye, Mr Dingiswayo or Ms Mokothini [?].

ADV SONI SC: Would you copy Mr Zide there on those matters?

MR MOGASHOA: No I did not have to.

ADV SONI SC: And why do you say that you did not have to?

MR MOGASHOA: Because he had not been involved at any stage with any of the matters or in any of what we as legal representatives would have had to deal with on behalf of PRASA in defending the matter.

ADV SONI SC: How long had you been acting for PRASA as at the time of this memorandum which is November 2017?

MR MOGASHOA: You mean our firm or...?

ADV SONI SC: Yes, no your firm.

MR MOGASHOA: Our firm has been doing work for – since

2012.

ADV SONI SC: And during that period who were your communications with – yours and your firm’s communications?

MR MOGASHOA: It would have been with the legal department on what we call corporate matters or it would have been with the insurance department if it – if it is liability instructions.

ADV SONI SC: But in regard to the litigation with whom?

10 **MR MOGASHOA:** Corporate litigation it would have been Ms Ngoye, Mr Dingiswayo or Ms **Mokothini**.

ADV SONI SC: And what role would the CEO play in that process?

MR MOGASHOA: We have not had to deal with the CEO in respect of the matters we were dealing with at the time.

ADV SONI SC: Then in paragraph 4 the Chairperson makes a point about the arbitration and she asks whether it happened before or after the liquidation application. Look at paragraph 4.

20 **MR MOGASHOA:** Must I read it out?

ADV SONI SC: Yes okay.

MR MOGASHOA:

“It also appears from the report that at some point the matters were referred to arbitration but what is not clear is whether these – this happened – consulting engineers went

into liquidation or not.”

ADV SONI SC: And can you shed any light on that?

MR MOGASHOA: I think in – if – we had agreed and I could be wrong but my recollection tells me that at the time we agreed as parties to refer the matters for liquidation.

ADV SONI SC: For arbitration.

MR MOGASHOA: For arbitration rather, information had not come forth at the time that there were liquidation proceedings in respect of the Siyaya Group of Companies.

10 But it came out that way before we could have arbitration proceedings to hear the matter that the Siyaya Group of Companies or some of them had volunteered to be liquidated.

ADV SONI SC: So the fact that there had been liquidation did not affect the – the referral to arbitration, would that be correct?

MR MOGASHOA: Not necessarily. I think when I was – on our side and for our part we – we then encouraged the legal representative of the Siyaya Group of matters to give us the
20 relevant Rule 7.1 authority to continue acting for them even though there was – there may have been a provisional liquidation order at the time I cannot remember and which mandates we received from [indistinct 00:05:14].

ADV SONI SC: Alright then at paragraph 5 perhaps you should read that into the record.

MR MOGASHOA: Paragraph 5 states:

“That you are aware that attorneys acting for Siyaya Consulting Engineers approached on or about 14 November 2017 and that they provided me with a copy of an interim report of the inquiry in terms of the Company’s Act that was prepared by the Commissioner and dated 15 September 2017. They also attached copies of email communication between Mr Madimpe Mogashoa of Mogashoa Diale and Advocate Francois Botes SC. The email communication is
10 also attached in Mogashoa Diale Attorneys Report.”

ADV SONI SC: Now this interim report is the interim report in relation to the 417 inquiry, would that be correct?

MR MOGASHOA: I – I imagine so. I cannot say with certainty but the subject refers to that inquiry in terms of Section 417.

ADV SONI SC: Yes Mr Mogashoa let us get to – on a number of occasions in your affidavit you say I have not seen the report. What report are you talking about?

MR MOGASHOA: It must be this report.

20 **ADV SONI SC:** It is this report.

MR MOGASHOA: Well I accept that. I saw the report only today. So there will be challenges with – on my part to confirm with precision what all of this reports talk about and they talk about the interim report. I saw it only today.

ADV SONI SC: Yes okay. Now in regard to this report

referral is made to it here and then you thereafter met the Chairperson of the Board later and at that – we are going to come to it referral was made to this report as well. What was your attitude towards commenting on the effect of the report on the litigation or the prospects of the defences exceeding?

MR MOGASHOA: I – whatever the report would be mentioned I would make the point that it would be difficult for me to comment on it in relation to the litigation without
10 having seen it. And I made the point that although we had agreed at the conclusion of the liquidation inquiry hearings that the report be made available to us redacted as may be. The report was never made available to us. I believe I made enquiries from our opponents whether they had received the report themselves or not. I do not think I received any answer that was positive in that regard. We may have also written to the Commissioner to enquire about the availability of the report and we never got a copy of such reports until I started hearing about it around November/December when
20 we then were involved in meetings with PRASA represented by the Chairperson of the Board.

ADV SONI SC: Now in paragraph 6 she – the Chairperson refers to certain communications from PRASA members. Could you just read that into the report and we can deal with that in a moment?

MR MOGASHOA: The report further reads on paragraph 6 that in the report.

“Diale Mogashoa Attorneys indicated that they became aware on 20 August 2017 after receiving communication from PRASA that certain members have received subpoena to appear in the liquidation inquiry. They attended the inquiry but were not allowed to cross-examine witnesses. They also alleged that the Commissioner has not provided them with the report.

10 **ADV SONI SC:** Okay and the paragraph continues on the next page.

MR MOGASHOA: Oh does it?

“That is continues to say you have noted from the bundle of the documents from Siyaya’s attorneys that these assertions may not be entirely correct.”

ADV SONI SC: Now just – just pause for a moment. This is in – she is talking about the assertions that your firm made. That is what the Chairperson is talking about.

20 **MR MOGASHOA:** That is what I understand her to be saying. Correct.

ADV SONI SC: Well would – are any of those assertions incorrect?

MR MOGASHOA: No they are correct. Specifically, if – if it is about whether we had at the time received the report or the interim report or not.

ADV SONI SC: And then she continues on as if you could continue at paragraph 6.

MR MOGASHOA: alright it says:

“However as acting Group CEO instructions with regard to the liquidation inquiry proceedings and handling of the high quotations would have come from you. Kindly confirm the nature of the instructions that were given to Mogashoa Diale in this regard. Please attach copies of such instructions.”

ADV SONI SC: And what is your reaction to that? That the
10 instructions would have come from Mr Zide?

MR MOGASHOA: I think in the second report that I prepared we deal with – we deal with what is contained in the Chairperson’s Report and we clarify issues that may have at the time been of concern to us as a law firm. So obviously instructions that our firm had been receiving up to that point were from legal. There would not have been any interaction between us and the acting CEO when it comes to their group of litigated matters.

ADV SONI SC: Alright. Then read paragraph 7 please.

20 **MR MOGASHOA:** It reads that:

“It is clear from the interim report of the Commissioner that the witnesses that testified at the liquidation inquiry include former and existing employees of PRASA. These witnesses would have attended the inquiry with your knowledge and understanding of the evidence that they were going to

tender.”

ADV SONI SC: And then paragraph 8.

MR MOGASHOA: It reads that:

“Should the contents of the Commissioner’s Report be correct it is clear that the witnesses made major concessions with regard to the liability of PRASA in the civil actions launched by Siyaya Consulting Engineers now in liquidation? However, despite these concessions Mogashoa Diale appeared to still want to proceed with the arbitration
10 proceedings. They however did not address the prospects of success at that arbitration proceedings in view of the evidence that has already been led at the liquidation inquiry.”

ADV SONI SC: Yes. And then it continues. I want to ask you a few questions on paragraph 8. Just finish paragraph 8 please.

MR MOGASHOA: Alright it continues to say:

“Kindly confirm if these are your instructions to Mogashoa Diale and the nature of evidence and witnesses that you
20 intend to lead at the pending arbitration proceedings.”

ADV SONI SC: Now let us just deal with the assertion that the witnesses made major concessions at the arbitration and this is – these are the PRASA witnesses. Let us get your role at the arbitration. You were allowed to sit for part of the Section 417 inquiry, would that be correct?

MR MOGASHOA: Correct.

ADV SONI SC: And that would be in regard to the PRASA employees.

MR MOGASHOA: PRASA employees ja who were at the time still in PRASA's employment.

ADV SONI SC: Yes. Now in regard to them where the – where major concessions made and you sat in that inquiry?

MR MOGASHOA: It will be difficult for me to confirm whether they had made any – any concessions that were of
10 any significance or not. I can tell you how we then tie up the proceedings as was the case at the time. Questions were – questions we had never seen before they put to the witnesses. We were not allowed to participate by asking questions of clarity or asking questions to the witnesses and so forth. And this is why we immediately made the point that we would wish to be placed in possession of the report when it becomes available particularly where it refers to the testimony or otherwise of the PRASA officials because we would have had to then take instructions from our client
20 thereabout. Now the arrangements with the Commissioner was that we as PRASA's legal team should facilitate some communication between the PRASA officials who testified and Mr Makhensa Mabunda who I believe represented Siyaya. In order to establish whether they would be any agreement that may lead to either settlements or resolution

of the matters. We then were engaged in numerous consultations with the same officials about what we understood at the Commissioner's Inquiry or commission to have been about and there are reports that I filed that I refer to in the – in the – in my affidavit that confirms that we could not come up with any information which necessitated that we consider looking at the claims in the arbitration differently from what would have been the case before the liquidations inquiries.

- 10 **ADV SONI SC**: So in effect when you look at what happened at the liquidation inquiry then you had these consultations and the idea as I understand it at the liquidation inquiry was that Mr Mabunda and these individual employees will get together to see if they could reach some figure.

MR MOGASHOA: That is correct.

ADV SONI SC: As to what PRASA is owing.

MR MOGASHOA: That is correct.

ADV SONI SC: You then wrote to the Commission, is that correct?

- 20 **MR MOGASHOA**: Correct.

ADV SONI SC: And what was the thrust of your letters?

MR MOGASHOA: The thrust of our letters would be that we – we could not establish any facts that would have necessitated that we – we engage or witnesses engage with Mr Mabunda with a view to – within mind perhaps to

establish whether there could be some agreement on the amounts still owed if amounts were still outstanding and all that a settlement be looked into seriously more than may have been the case before. We as PRASA's legal representative could not find anything that suggested that.

ADV SONI SC: That the case that you had pleaded was a weak case?

MR MOGASHOA: That the case that we had pleaded was a weak case. I can give an example so that we – we get to
10 some – we get somewhere in understanding what was before us at the time. When I was going through the – the report you may have picked up that for example we would say that PRASA is not liable because there was no authority for PRASA to enter into such arrangements as may have been pleaded. The witnesses may have been interrogated on the same works that we as external legal representatives are disputing that we authorised. So the – we will not be talking
20 at the same level when I am defending the matters by raising for example defences like you know *ultra vires* or lack of authority when the commission was dealing with whether those services as may have been disputed by us already were rendered or not. Or whether the invoices ...

ADV SONI SC: I was asking a diff – oh sorry.

MR MOGASHOA: Or whether the invoices were – it may have been an issue that dealt with whether invoices were

submitted in return for services rendered when our case was – the invoices as presented to us are not in continents with the annexures or the schedules that describe precisely what their services should be. So once again without having had the benefit of what value the report carried in as far as the alleged concessions were made it was almost impossible for us to make do of anything that may have – had to do with the inquiry itself.

ADV SONI SC: Then at paragraph 9.1 she – the
10 Chairperson says that she will contact – she needs a report from you on the defence strategy. Could you just indicate what she says specifically? Paragraph 9.1

MR MOGASHOA: Yes Paragraph 9.1 says:

“I will only and if absolutely necessary and appropriate involve former employees that testified after receiving a report from you and Ms Ngoye as well as Mogashoa Diale Attorneys on your defence strategy particularly in view of the concessions by current employees during the liquidation inquiry.”

20 **ADV SONI SC:** Right. And then she says at paragraph 10 that you should be advised what was going to happen next and what was that?

MR MOGASHOA: It says that:

“Please advise Mogashoa Diale Attorneys that I have read the report dated 21 November and that we shall revert to

them before the end of the week – of next week rather with instructions and a decision of further handling of this matter.”

ADV SONI SC: Now did you receive instructions on the further handling of the matter?

MR MOGASHOA: That – what transpired after perhaps the conclusion of the second report.

ADV SONI SC: Alright before we get to the report.

MR MOGASHOA: In the context of what she says here we
10 never received any further instruction particularly in respect
of – or with respect to what she says in this report and I
think I deal with that in the affidavit.

ADV SONI SC: Yes. Now in regard to this report – sorry her memorandum of the 28 November did you prepare a second report?

MR MOGASHOA: Yes subsequent one as requested by Mr Dingiswayo we – our firm prepared the second report.

ADV SONI SC: And is that the one marked MM7 and appearing at page 356 of Bundle E1?

20 **MR MOGASHOA:** Correct. That would be the report.

ADV SONI SC: Before we go into the report I just want to ask because this in a sense was intended as a response to what the Chairperson had raised in her memorandum to Mr Zide, is that correct?

MR MOGASHOA: Ja it – this report will speak to those

areas that involved our firm and I think that is what legal through Mr Dingiswayo asked her to do.

ADV SONI SC: Asked you to do. If you look at paragraph 1.1 of MM7 that is what it says:

“Given that the report was made available to us yesterday we can only accept that the date – well.”

But that is the report that you are responding to.

MR MOGASHOA: Correct.

ADV SONI SC: Okay. Now...

10 **CHAIRPERSON:** I am sorry Mr Soni. I think I have – I was still focussing on something and you may have moved on to something else. I note that in the – in the Chairperson’s memorandum that you have been dealing with she says in paragraph 9.1

“I will only end if absolutely necessary and appropriate involve former employees that despite after receiving a report from you and Ms Ngoye as well as Mogashoa Diale Attorneys on your defence strategy particularly in view of the concessions by current employees during the litigation
20 inquiry.”

Now that – this might not affect Mr Mogashoa but I raise it because it may be important. In relation to her dealings with the legal department because it seems that as at the date of this memorandum, she is still asking Ms Ngoye among others to submit reports.

ADV SONI SC: Yes.

CHAIRPERSON: About what she refers to as their defence strategy and of course she refers to Mogashoa Diale Attorneys as well. In relation to the question of her – of the allegation that she excluded the legal department it will be important to try and establish from when it is alleged exclusion happened.

ADV SONI SC: Yes.

CHAIRPERSON: Because at this stage she is still wanting
10 to involve the legal department.

ADV SONI SC: Yes.

CHAIRPERSON: At least in regard to the report. I think that it may be that in regard to giving instructions to the attorneys she may be saying those must be given by the acting CEO. So I thought I must mention that.

ADV SONI SC: Yes.

CHAIRPERSON: We will need to try and establish from when did the alleged exclusion take place.

ADV SONI SC: EYs.

20 **CHAIRPERSON:** Ja.

ADV SONI SC: I am going to deal with that next Chairperson.

CHAIRPERSON: Yes okay. Okay. And of course, in the last paragraph she does say:

“The reports from you”

We have paragraph 12.

“The reports from you, Ms Ngoye and the officials indicated in paragraph 9”

That is the paragraph that I am talking about – I was talking about.

“Must reach me on or before twelve o’clock on Friday 12 November.”

ADV SONI SC: Yes.

CHAIRPERSON:

10 “To enable me to report to the Board of Control on 1 December.”

ADV SONI SC: Yes.

CHAIRPERSON: Okay so there will be the question of whether apart from the report from Mogashoa Diale Attorneys whether there was a report from other people that she mentioned in the memorandum.

ADV SONI SC: Yes. Mr Mogashoa will not know that.

CHAIRPERSON: Yes, no she – I am just mentioning it for some other time.

20 **ADV SONI SC:** Yes. I would just – that is a matter that is dealt with by Mr Dingiswayo.

CHAIRPERSON: yes.

ADV SONI SC: Where he on the 30th submitted.

CHAIRPERSON: Yes.

ADV SONI SC: A report.

CHAIRPERSON: Yes.

ADV SONI SC: In response to this request for a report from Ms Ngoye.

CHAIRPERSON: Yes okay.

ADV SONI SC: I suppose because he was dealing with the matter.

CHAIRPERSON: Yes okay. So – no that is fine. I seem to remember a memorandum from him or a report that went to the acting Group CEO.

10 **ADV SONI SC:** Yes.

CHAIRPERSON: But was meant for the Group – acting Group CEO to pass it on I think.

ADV SONI SC: To – onto the Chairperson.

CHAIRPERSON: Ja.

ADV SONI SC: Yes.

CHAIRPERSON: So it is just important to link these two.

ADV SONI SC: No, no absolutely Chairperson.

CHAIRPERSON: Ja.

20 **ADV SONI SC:** Yes. But to come back to the question I am going to raise it in the context of what happened after this Chairperson.

CHAIRPERSON: Yes. Ja.

ADV SONI SC: If I could?

CHAIRPERSON: Okay.

ADV SONI SC: Now after you submitted this report – I say

this report meaning the report of the 30 November that is MM7 what happened next insofar as your dealings with PRASA were.

MR MOGASHOA: I think what happens next according to my affidavit is I was then called into a meeting at PRASA. Let me just see exactly where I deal with that.

ADV SONI SC: At paragraphs 24 to 27 Mr Mogashoa.

CHAIRPERSON: Are you back to his affidavit?

ADV SONI SC: To his affidavit sorry yes Chairperson. That
10 is SS13 in Bundle G.

CHAIRPERSON: Yes and what paragraph are we in now?

ADV SONI SC: 24 to 27.

CHAIRPERSON: 24 to 27?

ADV SONI SC: Yes at page 10 Chairperson.

CHAIRPERSON: Okay.

ADV SONI SC: Would that be correct Mr?

MR MOGASHOA: That will be correct yes that is what – what happened next is what I say in paragraph 24 of my affidavit.

20 **ADV SONI SC**: So let us – unless you want to read it could you explain to the Chairperson what happened on the 4 December?

CHAIRPERSON: Maybe before we do that and I may have missed this. Can we deal with what was different in their report of the 30 November?

ADV SONI SC: Yes.

CHAIRPERSON: To 2017 compared to the – because the earlier report had been done about what ten days before.

ADV SONI SC: Yes.

CHAIRPERSON: Yes. And what issues did it seek to address.

ADV SONI SC: No, sure. Sure. Sorry, we can we go back to Ms Ngoye's affidavit, MN7?

MR MOGASHOA: Which page?

10 **ADV SONI SC:** At page 356.

MR MOGASHOA: Yes.

ADV SONI SC: This is your report of the 30th of November.

MR MOGASHOA: 356. No, I am on it.

ADV SONI SC: Right. So, you then indicated in paragraph 2 that... I am so sorry. At paragraph ...[indistinct] [dip in recording] The fact that you had received the Chairperson's report 26th(?) [dip in recording] of November. Is that correct?

MR MOGASHOA: I think it 28 of November.

20 **ADV SONI SC:** Yes.

MR MOGASHOA: It is correct, yes.

ADV SONI SC: And then you deal with the questions that she had raised in the email(?) [dip in recording]

MR MOGASHOA: Correct.

ADV SONI SC: Okay. The first question is: The litigation

and the voluntary... the litigation and the liquidation. In other words, which came first? You will recall she had asked that.

MR MOGASHOA: Yes.

ADV SONI SC: And in essence, what do you say?

MR MOGASHOA: I will just summarise the paragraph.

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

MR MOGASHOA: Separating them through the main detail.

Well, the introduction that I give there is, the fact that we
10 had received instructions from PRASA which [dip in
recording] and that my opponent is... was at the time Mr
Mathopa of Mathopa Attorneys.

We summarised what was pleaded or we make reference to what was pleaded in the various sets of particulars of claim.

And that... then I see I make reference to a letter marked Annexure A that makes reference to communication between the parties in respect of the need for the matters to be consolidated.

20 And that we consider defending the matters for arbitration. I confirmed there on paragraph 2.3 that Judge Brand was appointed as the arbitrator in the proceedings.

ADV SONI SC: And then in paragraph 2.6, you say that those that have been adjourned to the 26th to the 29th of March 2018.

MR MOGASHOA: Ja, but there were dates in September of 2017.

CHAIRPERSON: Well, the dates that were in September were 11 to 22 September 2017.

MR MOGASHOA: Yes. No ...[intervenes]

CHAIRPERSON: That appears at paragraph 2.5 of your report.

MR MOGASHOA: Yes, yes. So ...[intervenes]

CHAIRPERSON: And as that time, that is now as at the
10 beginning of December or end of November, it appears that
the matters, the arbitration was set down for certain days in
March 2017.

MR MOGASHOA: Correct. This then means that... I think
around the time we were dealing with the liquidation
inquiries there was a problem with the issue of readiness to
proceed.

I think we have deliberated and discussed it between the
parties and I think Advocate ...[indistinct] [00:03:59] may
have been instrumental in dealing with Advocate Botes about
20 ...[intervenes]

ADV SONI SC: But the long and short is ...[intervenes]

MR MOGASHOA: [Indistinct]

ADV SONI SC: ...it was postponed to the... to March 2018.

MR MOGASHOA: It was postponed to March 2018, yes.

ADV SONI SC: Yes.

MR MOGASHOA: That is correct.

ADV SONI SC: Alright. Then in paragraph 3, you deal with the Section 417 Inquiry and you made a point in paragraph 3.1 that you do not have the interim report.

MR MOGASHOA: Yes, that is what I say in paragraph 3.1. But we do not have a copy of the interim report.

ADV SONI SC: Ja. And you then comment on the fact that the chairperson had been approached by the attorneys of the other side, and what do you say about that?

10 **MR MOGASHOA**: Is it paragraph 3.2. now?

ADV SONI SC: No, 3.1 still.

MR MOGASHOA: Alright. I say:

“It is surprising that our opponents have gone onto do so and that they went on further to hand over documents to the chairperson, which documents purportedly carried some weight in enabling the parties to assess the claims properly...”

ADV SONI SC: So what were you referring to there?

MR MOGASHOA: I was referring to the interim report.

20 **ADV SONI SC**: Yes. And the fact that the chairperson in her memo had said that she had been approached by the attorneys.

MR MOGASHOA: The attorneys for the other side.

ADV SONI SC: For the other side, yes.

MR MOGASHOA: Correct.

ADV SONI SC: Alright. Now, do you make... you make the point that you do not have the report.

MR MOGASHOA: Then I make the point that I... I think despite numerous attempts in getting a copy thereof, I still did not have it at the time of finalising this memo.

ADV SONI SC: Yes. Then in the rest of paragraph 3, you set out, more or less, what you have set out earlier about what had happened at the liquidation proceedings.

MR MOGASHOA: Correct.

10 **ADV SONI SC:** Yes. And then at paragraph 3.11, you respond to the accession by the chairperson that what you had said may not be entirely correct, and what was your response to that?

MR MOGASHOA: I am saying in paragraph 3.11 that:

“To date, our office has not been placed in possession of any or all of the documents that may have been made available to the chairperson of the interim board.

20 To this end, it is not certain to us under what or which context the chairperson that these assertions may not be entirely correct...”

ADV SONI SC: Right. Then in paragraph 4 and in particularly in 4.1, you deal with the question of what the effect of the concessions or what effect the concessions might have on PRASA’s case. What do you say about that?

MR MOGASHOA: We say there that:

“Although it has been PRASA’s position that it is liable to Siyaya despite of the proceedings of the inquiry, we, at this stage, submit that it would not be possible for us to comment on how the alleged concessions made would now affect the crux of the defence’s strategy in respect of each and every one of the defendant’s matters.

10 We would need to have sight of the relevant documents that may have been given to the chairperson including the interim report...”

ADV SONI SC: Now, were you ever given those documents, the relevant documents that you talked about?

MR MOGASHOA: I was never given any additional documents, no.

ADV SONI SC: So that is the report that you sent on the 30th in response to the chairperson’s memo of the 28th of November.

MR MOGASHOA: That is correct.

20 **CHAIRPERSON:** I see that in paragraph 3.2 of your report that you have just dealt with now... that you and Mr Soni have just dealt with, you deny a statement made in the PRASA’s Chairperson’s memo in paragraph 5, where she says that, if I understand you... understand the...

Ja, where she effectively says that your firm in your

report... this is the first report, I take it. No, I may be mistaken.

Oh, so they also attached copies of email communication between Mr Madimpe... Oh, that is the attorneys for Siyaya who she is talking about, where she says:

“They also attached copies of email communication between Mr Madimpe Mogashoa of Mogashoa Diale and Advocate Francoise Botes SC.

The email communication is also attached in Mr
10 Mogashoa, in Mogashoa Diale Attorney’s report...

Oh, she says that:

“Email communication is also attached to your earlier report...

You seem to respond to that in paragraph 3.2 by saying:

“We would also like to clarify that our previous report of 21 November 2017 did not attach any of the email communication between Madimpe Mogashoa and Francois Botes and neither did the report make reference to any such communication. We later in
20 this report, however, to the relevant communication, as may assist in clarifying some of these issues...”

So you confirm that in your first report, you did not attach any email communication, such as the email communication that the PRASA Chairperson’s says in paragraph 5 of her memo, you had attached?

MR MOGASHOA: That is correct Chair. And I think in paragraph 3.2, we just wanted to clarify that.

CHAIRPERSON: Yes. So if she got any such email, it certainly was not from you?

MR MOGASHOA: They were not from my office, no.

CHAIRPERSON: Yes.

ADV SONI SC: Chairperson, if I can put in context? Do you recall that the text annexed to Mr Botes' affidavit is the liquidator's report and the email communications that the
10 chairperson is talking about.

CHAIRPERSON: H'm-h'm.

ADV SONI SC: So that is... So ...[intervenes]

CHAIRPERSON: Or is she... maybe she could be saying... she might not be saying the email communication was attached to their report.

ADV SONI SC: Yes.

CHAIRPERSON: But she might be saying, the email communication between them and either Mr Botes or Siyaya Attorneys was attached to that report.

20 **ADV SONI SC:** Attached to that report, yes.

CHAIRPERSON: Okay.

ADV SONI SC: Because that is the report, she received from ...[intervenes]

CHAIRPERSON: It is just that that last line of paragraph 5 of her memo says:

“The email communication is also attached in Mogashoa Diale Attorney’s report..”

ADV SONI SC: Which she... with respect, she does in fact say that.

CHAIRPERSON: Yes.

ADV SONI SC: But...but ...[intervenes]

CHAIRPERSON: So what I was seeking to confirm is whether that is factually true.

ADV SONI SC: Oh, I see.

10 **CHAIRPERSON:** Because I read paragraph 3.2 of Mogashoa Diale Attorney’s second report as denying that.

ADV SONI SC: Yes.

CHAIRPERSON: Is my understanding in line with yours?

ADV SONI SC: Yes, yes. It is so.

CHAIRPERSON: Yes. And Mr Mogashoa, you confirm that to the extent that she says in her paragraph 5, to the extent that she may be meaning that in your first report you had attached such email communication. You say that is not true?

20 **MR MOGASHOA:** Correct Chair.

CHAIRPERSON: Okay.

ADV SONI SC: Yes, I was trying to ...[intervenes]

CHAIRPERSON: Obviously, if she means something else, that is different.

ADV SONI SC: Ja, sure.

CHAIRPERSON: Yes.

ADV SONI SC: Yes.

CHAIRPERSON: We ...[intervenes]

ADV SONI SC: I was just trying to make the point that there is no dispute that she received that from Mr Botes.

CHAIRPERSON: Yes, yes, yes.

ADV SONI SC: Because that... Mr Botes said so in their meeting of the 14th of November.

CHAIRPERSON: Yes, yes.

10 **ADV SONI SC**: Where he handed her the report ...[intervenes]

CHAIRPERSON: Yes, yes.

ADV SONI SC: So ...[intervenes]

CHAIRPERSON: But of course, she says this email communication was attached to their report.

ADV SONI SC: Yes, yes.

CHAIRPERSON: And the only report that she could be talking about at that time is the first report.

ADV SONI SC: The first report ...[intervenes]

20 **CHAIRPERSON**: And Mr Mogashoa says that is factually not true.

ADV SONI SC: Yes.

CHAIRPERSON: Ja.

ADV SONI SC: That is correct. Now, you say ...[intervenes]

CHAIRPERSON: I see that we have gone past one.

ADV SONI SC: Oh, sorry.

CHAIRPERSON: But I would like us to finish if we can.

ADV SONI SC: Yes.

CHAIRPERSON: I thought we would finish before twelve or around twelve but the matter we have dealt with are important.

ADV SONI SC: Yes.

CHAIRPERSON: But I think we should be able... I do not know what your own assessment is. In 30-minutes time or
10 so?

ADV SONI SC: I... that is my assessment Chairperson, yes.

CHAIRPERSON: Yes, yes. So let us continue.

ADV SONI SC: Yes.

CHAIRPERSON: But if you need... if anybody needs a comfort break, we can take that but if we can move on and try and finish by half-past, let us do so.

ADV SONI SC: Yes.

CHAIRPERSON: Okay.

ADV SONI SC: Now, on the 4th of December, if we could just
20 summarise these aspects please Mr Mogashoa. What happened on the 4th?

MR MOGASHOA: Around the 4th of December, I got a call from Mr Zide whom I believe was acting Chief Executive Officer of PRASA at the time.

CHAIRPERSON: Speak closer to the mic again.

MR MOGASHOA: Okay.

CHAIRPERSON: Ja.

MR MOGASHOA: Apologies about that Chair. I received a call from Mr Zide who indicated to me that the Chairperson, Ms Makhubela, wanted to see me about issues related to this, Siyaya Group of matters.

My colleague and I, Ms Mbebe, and I went to PRASA's offices. I imagine it, it was in the... during the same day. We were ...[intervenes]

10 **ADV SONI SC**: At paragraph 25, you say what the purpose of the meeting was. What was the purpose of the meeting?

MR MOGASHOA: Correct. I say there that at the meeting the chairperson raised concerns about the fact that my firm was involved in formulating responses to her memo of the 28th of November when she, in fact, had wanted the Group CEO to respond and perhaps with the assistance of the internal legal department in that certainly ...[intervenes]

ADV SONI SC: No, but sorry Mr Mogashoa.

MR MOGASHOA: Yes.

20 **ADV SONI SC**: I understand you are making a different point. If you read paragraph 25. Her unhappiness stemmed from the fact that it was distributed to you.

MR MOGASHOA: Correct. I think I am saying the same thing.

ADV SONI SC: Okay.

MR MOGASHOA: Yes, that she expressed some discomfort about the fact that the memo was distributed to me.

ADV SONI SC: Okay. Now in regard to that memo, what did she want?

MR MOGASHOA: She did not say anything further than the fact that she expressed unhappiness about the fact of the memo ...[intervenes]

ADV SONI SC: Well, if look at para... the rest of paragraph 25, you say she wanted you to hand the memo back.

10 **MR MOGASHOA**: Yes, I can finish my point on that.

ADV SONI SC: Okay.

MR MOGASHOA: So she expressed her unhappiness about the fact that I was... I had been given the memo, and she is aware that there may have been a report that I prepared in response thereto and that she was not interested in that report.

20 She asked that I hand back the memo but I made the point that I had received the memo electronically but if she wanted our firm to discard of the memo, we would do so when we get to the office.

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

CHAIRPERSON: I am sorry, Mr Soni.

ADV SONI SC: Yes, Chair.

CHAIRPERSON: I see that you say in that paragraph, you say that she said she was not going to accept your report of

30 November 2017 that responded to the memo, to her memo insofar as your firm was concerned, given that her memo was not meant for you in the first place.

MR MOGASHOA: Correct.

CHAIRPERSON: Did she say that?

MR MOGASHOA: That is what she said, yes.

CHAIRPERSON: Is your recollection quite clear?

MR MOGASHOA: My recollection is quite clear.

CHAIRPERSON: Did that not surprise you ...[intervenes]

10 **MR MOGASHOA**: Well, I ...[intervenes]

CHAIRPERSON: ...given her memo even though it may not have been meant to you, because in that memo we just had a look. She wanted a report from a number of people but those people included yourselves.

MR MOGASHOA: Yes, but if you look at the memo Chair... if you look at the memo, she... although she made reference to our firm in as far as some of the issues she was gabbling with, may have been concerned.

20 Her point to me at the meeting was that the memo was meant to be dealt with internally, and that she did not understand why legal thought it fit to pass on the memo to me to speak on even if it is on the very same issues that perhaps concerned our firm at the time.

CHAIRPERSON: Well, I just want to check because my understanding, and I think it was paragraph 9... no, it is not

paragraph... ja, it was 9. She says:

“I will only and if absolutely necessary and appropriate involve former employees that testified. After receiving a report from you and Ms Ngoye, as well as, Mogashoa Diale Attorneys on your defence strategy but when in view of the concessions by current employees...”

What was your... what is your... you saw this report even though she said it should not have come to you? What was
10 your understanding of this paragraph or have you no recollection of how you understood it at the time?

MR MOGASHOA: I understood Chair that legal was looking for assistance from my firm in as far as explaining perhaps with more detail what the liquidation proceedings were about and what we made of them as PRASA’s legal representatives which was requested by legal.

I did not suspect was untoward. We had given them the first report. If more detail was required around issues to do with the liquidations inquiry, that is what I thought legal
20 would have wanted us to assist them around.

But at the meeting... fine, she took the point that the memo was not meant for our firm. And then in that respect, we did not even have to discuss the memorandum of the 30th of November because her position was the memo was not meant for us.

So that report we had drafted, we were not supposed to have drafted in the first place.

CHAIRPERSON: H'm. Of course, did your report of the 30th of November, dealt with what she called "defence strategy"? Because it seems that she wanted Mr Ngoye and your firm to deal with in terms of paragraph 9.

But again, she was saying:

"I will only and if absolutely necessary and appropriate involve former employees..."

10 So, I think she was saying, "If I am to involve former employees, I first need to have a report from Ms Ngoye and Mr Zide and PRASA's Attorneys, Mogashoa Diale Attorneys, telling me what the defence strategy is..."

Is your understanding the same as mine on what she was saying?

MR MOGASHOA: It is. The only thing is. Up to that point, the only request I had received was from legal to comment on those areas of her memo that concerned our firm.

CHAIRPERSON: No, no. I will come to that.

20 **MR MOGASHOA:** Yes.

CHAIRPERSON: I just want to check. Is my understanding of what she was talking about, the same as yours in that paragraph?

MR MOGASHOA: It can be Chair.

CHAIRPERSON: If she was to involve former employees,

she would need a report from Mr Zide, Ms Ngoye and Mogashoa Diale Attorneys on what the defence strategy is. We are on the same page?

MR MOGASHOA: We are on the same page Chair.

CHAIRPERSON: Yes. Now, were you asked by either Mr Zide or the Legal Department of PRASA to prepare a document that dealt with PRASA's defence strategy in regard to the Siyaya matters?

MR MOGASHOA: Not at that point of the 4th of December.

10 **CHAIRPERSON:** Yes. No, not around that time.

MR MOGASHOA: Not around that time.

CHAIRPERSON: And not after, actually.

MR MOGASHOA: Not ever after that.

CHAIRPERSON: Yes. Okay. Alright. And just to confirm. Your report of the 30th of November did not deal with that? Did not deal with the defence strategy that she was talking about?

MR MOGASHOA: No, it did not.

CHAIRPERSON: Yes, okay. Mr Soni.

20 **ADV SONI SC:** As you please Chairperson. And then she pointed out that she was not going to look at the memo of the 30th of November that you had prepared.

MR MOGASHOA: Yes, that is correct.

CHAIRPERSON: I think if we call it a report, let us be consistent.

ADV SONI SC: Ja, sure.

CHAIRPERSON: Otherwise, somebody will read this transcript. After some time, we will think there is also a memo of 30th November and the report of 30th November.

ADV SONI SC: Yes, yes.

CHAIRPERSON: Okay.

ADV SONI SC: Now, forget the fact that the memo, her memo of the 28th was not meant for you. You take the trouble, having received instructions from legal, to prepare a
10 report.

MR MOGASHOA: Correct. That is what happened.

ADV SONI SC: I think that is the point the Chairperson is making that the chairperson now says, “I am not looking at it”. Did that not surprise you?

MR MOGASHOA: I was surprised.

ADV SONI SC: Alright. Then ...[intervenes]

CHAIRPERSON: I am sorry. If we take it that she was not interested in your second report and that, therefore, she did not look at the report.

20 Are you able to say what perspective or knowledge she deprived herself off in regard to understanding these... this matter better or would you not be able to say?

Because your report would have dealt with certain issues, and I take it, there would have been a need for such issues to be clarified, given that you had such prepared

another report.

MR MOGASHOA:

“I kept telling her I am under serious constraints to prepare the second report. And for me, in the context that I understood her memo for have been asking for a bit more information, I thought that would have been information relevant to some of the inquiries she had made albeit that she did not expect that I would add to her memo.

10 But I thought they were relevant submissions to bring anyone onboard about or regarding the issues that were confronting all of us in respect of the Siyaya matters...”

CHAIRPERSON: Okay.

ADV SONI SC: And from the PRASA’s side, only you and counsel had read... had attended the Section 417 Inquiry. Would that be correct?

MR MOGASHOA: It would be my team, meaning Ms Mbebe and myself and the counsel team and, of course, the officials
20 of PRASA or from PRASA that...

ADV SONI SC: But they were witnesses.

MR MOGASHOA: Ja, they were the witnesses.

ADV SONI SC: Yes.

MR MOGASHOA: Otherwise, it will be us. Ms ...[indistinct]
[00:28:07] may have come for a short period, either on the

first day or the second day that we appeared but she came very briefly, and I could be wrong in suggesting so. But she may have come through to...

ADV SONI SC: Now, in regard to the, again the interim report of the insolvency inquiry. What transpired or what discussion transpired at this meeting of the 4th December?

MR MOGASHOA: At the meeting of the 4th of December, I do not believe that we got to the details of that report. I think what I was then told by the chairperson was that the
10 board would take a view on how to proceed with these matters and if needed what our firm's further involvement would be.

ADV SONI SC: Did you explain to the chairperson the disadvantage you were under as a result of the fact that you did not have the report?

MR MOGASHOA: The discussions did not go that far ...[intervenes]

ADV SONI SC: Yes.

MR MOGASHOA: ... Due to the fact that she did not want to
20 get into the details of my report of the 30th of November.

CHAIRPERSON: Did you tell her that you had not seen the interim report?

MR MOGASHOA: Let me just refresh my memory because I think paragraph 26 says something of my affidavit about the report.

ADV SONI SC: If you look at the third line from the top... I mean, from the bottom. “I made the point...”

MR MOGASHOA: Alright. Then it means... she mentioned the report. And I am saying I made the point that I did not have the report she was referring to despite I have may have called for it, for a reply to our meeting.

She first sets out her concerns about how PRASA was now going to deal with the report in the arbitration proceedings which at the time had been postponed too much giving the evidence of the employees of PRASA.

ADV SONI SC: Right. And then the last sentence of that paragraph, again, four lines from the bottom, you started with: “I made the point...”

MR MOGASHOA:

“I made the point to Ms Makhubela at the meeting that it was not going to be possible for me to comment on her concerns without the benefit of having of having seen the contents of the interim report and the insolvency inquiry myself...”

20 **ADV SONI SC:** Alright. How did the meeting close?

MR MOGASHOA: I think it was ...[intervenes]

CHAIRPERSON: Yes, maybe before it closes. I am not sure you have dealt fully with these issues of the interim report in terms of what transpired between you and the PRASA Chairperson and I realise that you needed to refresh your

memory.

Do you want to just to tell me again, how did the interim report come up in the conversation? What did she say? What did you say? If you need to refresh your memory, you may refresh your memory but I just want to hear fully what transpired at that meeting.

MR MOGASHOA: Okay. At the time I was dealing with this issue earlier, I was under the impression that the report was discussed at the next meeting that followed but I see
10 that paragraph 26 and maybe 27 makes reference to the fact that she raised the issue of the report at a meeting. I indicated that I had not seen the report, I was never placed in possession of that report and that therefore it was going to be difficult for me to make any comments about the value that and the weight that the report carried in the context before the arbitration that had been intended to follow in March of 2018 and that I had no to offer her other than that perhaps if the report were (indistinct – recording distorted) act on it and consider it and do, it would have
20 been necessary for me as the legal representative to do given the contents of the report and I think it did not go any further than that except that – but that I must point out that we then were told as a firm that PRASA will revert back to us as soon as she has some idea about what PRASA's attitude is towards the report and the matters in

the entirety.

CHAIRPERSON: Was this your first meeting with her in regard to PRASA MIS?

MR MOGASHOA: It was my first meeting with her, yes, on the 4 December.

CHAIRPERSON: Okay.

ADV SONI SC: As you please. Now who all was present at that meeting?

MR MOGASHOA: It was myself, it was Ms Mbebe from
10 our office, it was Mr Zide and the Chairperson, [indistinct –
dropping voice]

ADV SONI SC: Okay, so would that mean that nobody from the legal department but particularly Ms Ngoye or Mr Dingiswayo was present?

MR MOGASHOA: They were not present at that meeting of the [inaudible – speaking simultaneously]

ADV SONI SC: Would that surprise you?

MR MOGASHOA: Well, yes, it did. It did surprise me that they were not part of [indistinct – dropping voice]

20 **CHAIRPERSON:** I take it from what you have said about what transpired at that meeting that you did not expressly ask the PRASA Chairperson to let you have a copy of the interim report.

MR MOGASHOA: I did put it to her that it would be helpful that I be placed in possession of the report.

CHAIRPERSON: Yes.

MR MOGASHOA: Yes, I did say in the meeting...[intervenues]

CHAIRPERSON: You did say that, yes. Yes and did she then offer you a copy of the interim report?

MR MOGASHOA: Not at that stage, I was told that PRASA will get back to us.

CHAIRPERSON: Yes.

MR MOGASHOA: As a firm on what the decision is in
10 dealing with the matters.

CHAIRPERSON: About going forward.

MR MOGASHOA: So at that point I did not receive or I was not given a copy of the report.

CHAIRPERSON: Yes, okay.

ADV SONI SC: So did you get the impression then that this decision was going to be made without any further input from you?

MR MOGASHOA: Well, you can accept that at that point, Chair, I was not aware what decisions PRASA was likely to
20 make. I was told that I would be contacted as soon as there was some idea to getting what to do with either the report or the matters and that is precisely what happened.

CHAIRPERSON: It is quite clear from what you have said in regard to I think that meeting but also in regard to the PRASA Chairperson's memo of 28 November that she

believed that certain employees of PRASA had made major concessions with regard to the Siyaya claims and it would seem that she was – it would seem that she implies that what she regarded as major concessions made by those employees would play quite a significant role in the decision about the way forward. That is the impression I get from her memo and from what you tell me. Is that an impression that is the same as the impression you had then or not at that stage?

10 **MR MOGASHOA:** That is the impression I got, that she was worried about what leg then PRASA stand on in further continuing to defend the matters given the contents of the report and this is why I repeated on many occasions that it - without the benefit of the internal report there could not have been any more that our firm could say other than to accept that there is a report in existence.

CHAIRPERSON: And of course, in her memo of the 28 November she specifically made reference to requiring to be told by Mr Zide, Ms Ngoye and your firm what the
20 defence strategy, what PRASA's defence strategy was to the Siyaya claims, is that right?

MR MOGASHOA: That is indeed so.

CHAIRPERSON: But she did not at the meeting of the 4 December, as I understand your evidence, say to you what I would like from you is to tell me either now or to furnish

me with a document that tells me what your defence strategy of PRASA is. She did not say that, did she?

MR MOGASHOA: No, no, Chairperson, she did not say that.

CHAIRPERSON: At the meeting of the 4th.

MR MOGASHOA: At the meeting of the 4th.

CHAIRPERSON: Ja and ...[intervenes]

MR MOGASHOA: I was not asked to make any further representations about my impressions of ...[intervenes]

10 **CHAIRPERSON:** Of the defence.

MR MOGASHOA: Of the defence with or without the report or the interim report of the Commissioner.

CHAIRPERSON: Yes.

MR MOGASHOA: I was not asked to make further representations around that.

CHAIRPERSON: Ja, okay.

ADV SONI SC: Just one final question on the persons who were present. Did Ms Makhubele ask at that meeting, ask Mr Zide where the members of the legal team were?

20 **MR MOGASHOA:** Not to my recollection. If she did perhaps, I was not there.

CHAIRPERSON: Not during your presence.

MR MOGASHOA: Not during my presence.

CHAIRPERSON: Oh, okay.

ADV SONI SC: Alright.

CHAIRPERSON: Were you told anything about why they were not there?

MR MOGASHOA: No, nothing was explained to me but you would see that in paragraph 27 of my affidavit I do say that I called them immediately thereafter because I had to – it was the first time that I was interacting on the matter at PRASA with PRASA officials other than them. So I called them to say to them at the meeting, the Chairperson is not happy about the fact that other firm was asked to
10 comment on the memo and that I was told that PRASA would get back to me.

CHAIRPERSON: Yes.

ADV SONI SC: Then there was a further meeting between you and Ms Makhubele.

MR MOGASHOA: Correct.

ADV SONI SC: And when was that?

MR MOGASHOA: On paragraph 28 of my affidavit I make reference to the fact that on the 14 December I called – I received a call from Mr Zide who implicated ...[intervenes]

20 **CHAIRPERSON:** I am sorry, I am sorry, Mr Soni and Mr Mogashoa.

ADV SONI SC: As you please.

CHAIRPERSON: Just looking at the last part of your paragraph 27, when you told Ms Ngoye and Mr Dingiswayo and Ms Khoteti about your meeting with the PRASA

Chairperson and Mr Zide on that day did they say anything about their absence at the meeting or did they seem to know that they know about the meeting at all or is that something you cannot remember?

MR MOGASHOA: It is something I cannot remember because I think – I placed emphasis on reporting back to them that the Chairperson must have been happy.

CHAIRPERSON: Yes.

MR MOGASHOA: And that I was informed that the
10 members of the legal then would have to explain to her what happened, much as I was told at the meeting that PRASA will get back to us, as a firm, that need be there.

CHAIRPERSON: Ja, okay.

ADV SONI SC: Alright, then the next meeting you say took place on the 15 December?

MR MOGASHOA: Yes, I got called on the 14th
...[intervenues]

ADV SONI SC: By whom?

MR MOGASHOA: By Mr Zide that the Chairperson wanted
20 a meeting with us on the Siyaya matters the next day.

ADV SONI SC: Alright. Now did that meeting take place?

MR MOGASHOA: Yes, the meeting took place on the 15th, I did not state the time because I cannot remember what time the meeting was and I think present at the meeting was the Chairperson, Mr Zide and myself. I cannot

remember that anyone else was there.

ADV SONI SC: But certainly not Ms Ngoye and Mr Dingiswayo.

MR MOGASHOA: Certainly not Ms Ngoye or Mr Dingiswayo.

ADV SONI SC: Did Ms Makhubele ask Mr Zide where Ms Ngoye or Mr Dingiswayo were at that meeting while you were there?

MR MOGASHOA: If there was ever that conversation, I do
10 not have any recollection.

ADV SONI SC: And if had taken place would you have remembered it?

MR MOGASHOA: I would have perhaps, I would imagine so.

ADV SONI SC: Okay. Now, anyway, at this meeting, if you could just briefly summarise what happened there?

MR MOGASHOA: Alright, Chair. I got called into the meeting, got into the meeting with my files – and by files, I am referring to the reports because I thought that the
20 meeting would be about the two reports that I had prepared. I think two keys things were tabled as agenda items. The first one was that after having given regard to a variety of issues and factors and in particular the evidence as may have been contained in the interim report that PRASA's attitude was that there be some attempt at

settling the matters and we then went into the - I must then obviously at this point say that well, if those would be PRASA's - if that would be PRASA's attitude I would accept it but I made the point further, I think at that meeting, that I do not know - I would not know what the considerations are given the fact that still at the time I did not have the report or the interim report but that I would accept PRASA's position if it now prefers that it settles the disputed matters with the Siyaya Group.

10 We then got into some bit of detail on what PRASA thought it wanted to do and this is through obviously the Chairperson and Mr Zide. I speak about it on paragraph 31, subparagraphs 31.1 ...[intervenes]

ADV SONI SC: Well, before you go to paragraph 31 please go back to paragraph 29.

MR MOGASHOA: Yes.

ADV SONI SC: You were told that - well, were you told who would be dealing with the matter from now on?

MR MOGASHOA: Alright, what I said, two issues, Chair,
20 earlier on, one of the issues that was raised was that I then would have to accept that the matter was no longer the responsibility of legal and that the board was now seized with the responsibility of dealing with the matters further. I was given instructions that from that point onwards I would have to deal with Mr Zide.

I cannot remember whether at the time he was still the Acting Group CEO or he had reverted back to his original position of the company secretary but I was told that the matters would be dealt with by the board and communication to my office will be through the office of Mr Zide and that at that point was advised that there was no need then for me to continue discussing the matters with the legal department.

ADV SONI SC: With regard to Mr Zide's position at that
10 time, you do not need to go there.

MR MOGASHOA: Ja.

ADV SONI SC: Ms Ngoye in her affidavit says that Mr Zide from the 7th was no longer the Acting CEO. Mr Malope became the Acting CEO and Mr Zide reverted to his earlier position of Chairperson of the board. I am just placing that on record.

MR MOGASHOA: Oh, yes, yes. But the instruction was that whatever communication between our firm and PRASA would be through Mr Zide and Mr Zide's office.

20 **ADV SONI SC:** Now in regard to the fact that you were no longer to communicate with PRASA legal, what was your reaction to that? Not expressed necessarily but I am just saying, your personal reaction to it?

MR MOGASHOA: Well, perhaps let me respond by saying that it is not unusual that we receive such instructions in

our firm given the profile of some of the clients we have. So it has happened before that the CEO of an institution would request us not to deal with legal perhaps because legal was the subject of whatever investigation we had to carry out. It is not unusual for the board consult with us and provide us with instructions to that centre around investigations of a CEO of a company.

So to that extent – and when I was told that the board has decided to take responsibility for such matters I
10 was not overly perturbed by that instruction. It was followed by another instruction that communication should happen through the company secretary, it is not unusual that company secretaries would carry that or such responsibilities as and may be required by the board.

So in that sense, I was not overly perturbed by the Chairperson's position that the matter was now in the hands – the matters were now in the hands of the board for the board to take.

CHAIRPERSON: Actually, you were not perturbed at all?

20 **MR MOGASHOA:** I was not perturbed at all, yes, correct. Correct, Chair.

CHAIRPERSON: I just notice you were saying not overly perturbed but I thought your explanation must mean you were not perturbed.

MR MOGASHOA: I was not perturbed because we do

receive such instructions from the institutions we carry out for from time to time.

CHAIRPERSON: Ja. Would you get to know in other instances why, for example, the legal department would be required not to communicate with the legal department or to get instructions from them but rather the CEO or would you just been told – would you have just been told that from now on it is the CEO's office that will deal with you without being told anything else like, well, there are some
10 investigations about concerning the legal department or anything like that.

MR MOGASHOA: Well, other than that there would be ...[intervenes]\

CHAIRPERSON: Some explanation?

MR MOGASHOA: Well, or that whatever investigation or instruction related to a member or members of the ...[intervenes]

CHAIRPERSON: Legal department

MR MOGASHOA: Legal department or the head for that
20 matter.

CHAIRPERSON: Yes, yes.

MR MOGASHOA: We then find ourselves dealing with other functionaries other than legal in such.

CHAIRPERSON: Ja, okay.

MR MOGASHOA: And we do understand that.

CHAIRPERSON: Ja, okay.

MR MOGASHOA: Some of the matters we would do on behalf of boards, would be matters that have to with boards.

CHAIRPERSON: Yes.

MR MOGASHOA: And they contain information that relate to functionalities which the board did not wish that the functionalities gain access to at the very least through us.

CHAIRPERSON: Yes.

10 **MR MOGASHOA:** So we ...[intervenes]

CHAIRPERSON: So it does happen.

MR MOGASHOA: It does happen.

CHAIRPERSON: Ja, okay.

ADV SONI SC: But this was unusual and I am going to suggest to you why. Immediately after the meeting you phoned Mr Dingiswayo and told him about that [indistinct – dropping voice]

20 **MR MOGASHOA:** Yes, immediately after the meeting I called Mr Dingiswayo and I mentioned to him that ours (indistinct – recording distorted) in the boards hands and that there was no need for me to be discussing them further with legal.

ADV SONI SC: Well, I am going to suggest, Mr Mogashoa, that that is quite different from the examples you have been giving us. You were told do not consult with

(indistinct – recording distorted) talk to them. That is exactly what you do. I am asking them about your reaction to that instruction.

CHAIRPERSON: Maybe before that question let me get clarity as to what precisely the Chairperson told you with regard to any further dealings between yourself and the legal department PRASA. At one stage I think, you know, in your affidavit you say something to the effect that she said there was no need for you to deal with the legal
10 department of PRASA or to take instruction from them but I think elsewhere you put it more like an instruction.

Now if she says there is no need it might not be an instruction not to deal with them, it might simply be that you will not have to get instructions from them, you will now get the instructions from us, so if you talk to them, I do not see any need why you would talk to them but I am not saying do not talk to them but if you say it was an instruction not to talk to them then it has a different connotation. Precisely what was it? What did she say?

20 **MR MOGASHOA:** Just to assist you, Chair, it was an instruction and this is precisely why I contacted Mr Dingiswayo.

CHAIRPERSON: Yes.

MR MOGASHOA: I contacted him for two reasons. The first being that I wanted to manage legal department's

expectation of me telling them what further instructions I have from the board and secondly, because I at the time was dealing with many others of the instructions. I did not want to find myself in a difficult position where we now get in to discussing the Siyaya matters because when I was when I had been given an instruction not to discuss the Siyaya matters with them and we – so I do not know what I have done here – and we continued to interact on the other matters or in respect of other matters without necessarily
10 getting into the issues to deal with the Siyaya matters.

CHAIRPERSON: Well, that is important because I meant to ask you later on whether the Siyaya matters were the only matters you were handling on behalf of PRASA whether there were other matters. From what you have said now it seems that there were other matters on which you had instructions from PRASA other than the Siyaya claims.

MR MOGASHOA: Correct, Chair, there were other matters that I was dealing with.

20 **CHAIRPERSON:** Are you able to say it was two or three? Are you able to say it was a number of them?

MR MOGASHOA: It was a number of them.

CHAIRPERSON: Yes.

MR MOGASHOA: I was doing quite a fair number of litigation matters on behalf of PRASA Corporate.

CHAIRPERSON: Yes, you might not be able to be precise in terms of the number but are you able to give an estimate more or less? Ten? More than ten or...?

MR MOGASHOA: There may have been at the time six, seven or eight.

CHAIRPERSON: Matters.

MR MOGASHOA: Other unrelated matters.

CHAIRPERSON: Ja, that is apart from the Siyaya matters.

10 **MR MOGASHOA:** Apart from Siyaya.

CHAIRPERSON: Yes.

MR MOGASHOA: That were in arbitration.

CHAIRPERSON: Yes.

MR MOGASHOA: Forums or – that they were litigated out of the High Court.

CHAIRPERSON: Yes.

MR MOGASHOA: And mostly we, acting as defendant. I cannot imagine ...[intervenes]

CHAIRPERSON: Yes, so PRASA had been sued.

20 **MR MOGASHOA:** PRASA was being sued, correct.

CHAIRPERSON: Just for the sake of completeness, did the PRASA Chairperson at any stage ever interact with you in regard to the other matters you were handling on behalf of PRASA other than the Siyaya claims?

MR MOGASHOA: No to my recollection, Chair, I think to

assist you further with your question, I do not believe that I have since the meeting of the 14th that I had any further interaction or engagements with the Chairperson of PRASA.

CHAIRPERSON: Yes, but I am also asking even before that meeting of the 14th whether you had any interaction with her with regard to claims against PRASA that you were handling on behalf of PRASA other than the Siyaya claims?

MR MOGASHOA: I was called to come and discuss with
10 them only the Siyaya matter.

CHAIRPERSON: Only the Siyaya claims.

MR MOGASHOA: Correct.

CHAIRPERSON: The other ones that you were handling were also pending in either court or arbitration.

MR MOGASHOA: Correct, that is indeed so, some of them are still very much alive to this day.

CHAIRPERSON: Yes, okay, thank you.

ADV SONI SC: As you please.

CHAIRPERSON: So but you – going back to the earlier
20 question are you quite clear in your own mind that what she gave you in that meeting was an instruction not to discuss with the legal department not to discuss the Siyaya claims with the legal department of PRASA? Are you quite clear? Is your memory quite clear on that?

MR MOGASHOA: My memory is quite clear, I called Mr

Dingiswayo. I see Mr Dingiswayo speaks about it in his sworn affidavit.

CHAIRPERSON: Yes.

MR MOGASHOA: But if you look at the fact that our firm then strictly started communicating with the office of Mr Zide only, that as well would confirm that the instruction to me was clear.

CHAIRPERSON: Yes.

MR MOGASHOA: That I should communicate with only
10 the office of Mr Zide.

CHAIRPERSON: Yes.

MR MOGASHOA: Or through the office of Mr Zide.

CHAIRPERSON: Ja, okay.

MR MOGASHOA: If I put it that way.

CHAIRPERSON: Mr Soni?

ADV SONI SC: As you please, Chair. What was Mr Dingiswayo's reaction to that communication that look, I have been instructed not to talk to legal?

MR MOGASHOA: He was surprised, we did not have a
20 lengthy discussion but he was quite taken aback by my having said to him that the Chairperson has instructed me to deal with the board through Mr Zide's office only.

ADV SONI SC: Alright, then at paragraphs 30, 31, and – sorry, paragraphs 30 and 31, you make the point that at the end of the day the Chairperson again raised the question

of the 417 Inquiry, the adverse effect it would have on PRASA's prospects of success for defending and then you say that you were told to settle four of those claims.

MR MOGASHOA: Correct.

ADV SONI SC: Is that what happened?

MR MOGASHOA: That is what happened.

ADV SONI SC: Now I am not going to go into the settlements now be you later on say that there was a written instruction on precisely how the matters were to be
10 settled. We will come back to that. Then at paragraph 32 you make the point that you were given an instruction about how the settlement agreements, what to include in the settlement agreement.

CHAIRPERSON: I am sorry, Mr Soni. You said you are going to skip this settlement agreement because later on he talks about a letter.

ADV SONI SC: Yes.

CHAIRPERSON: But is it not better to deal with it because now in 32 he is talking about a clause that was
20 meant to be in the settlement agreement or the issue of confidential but we don't know yet that he has been instructed.

ADV SONI SC: That is so Chairperson.

CHAIRPERSON: So I think logically we should hear that, he gets instructions to settle on whatever terms and then

...[intervenes]

ADV SONI SC: Yes, as you please.

CHAIRPERSON: Ja.

ADV SONIC SC: So in paragraph 31 you set out the manner in which you were to settle each of the four claims that – where I mentioned there, is that correct?

MR MOGASHOA: That is correct.

ADV SONI SC: Alright let us look at 31.1 ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, are you still at
10 that one dealing with what transpired at the meeting of the
15th of December, it looks like. Are you still in paragraph
31 dealing with what transpired at the meeting of 15
December?

MR MOGASHOA: Correct Chair.

CHAIRPERSON: Yes, okay. Okay, deal with that.

ADV SONI SC: So at this meeting now you are told that four of the matters are to be settled and you are given the figures at which you must settle, is that correct?

CHAIRPERSON: I am sorry Mr Soni. What did Ms
20 Makwela say about the settlement of the Siyaya matters at that meeting?

MR MOGASHOA: Chair I am not sure I follow but ...[intervenes]

CHAIRPERSON: I just want to, did she say anything about the Siyaya claims being settled at that meeting, I

just want you to tell the story.

MR MOGASHOA: Okay, alright, okay, I think I understand what you ...[intervenes]

ADV SONI SC: You deal with it at paragraph 30, the last part of paragraph 30.

MR MOGASHOA: Paragraph 30.

CHAIRPERSON: And you can refresh your memory but I just want you to relate to me the story.

MR MOGASHOA: The summary – I can summarise
10 paragraph 30 to be that the Chairperson put to me that given the contents of the interim report and perhaps other factors plus I had decided that it will be in its best interests that the – it attempts to settle the matters with the Siyaya Group, given that she was concerned about the fact that we may not have evidence that is adequate or sufficient to sustain proper defences in light of the fact that the interim report suggested to her that there were concessions made by the PRASA witnesses and I think I made the point to her once again that I cannot comment on
20 the report, but I do hear what she is saying about PRASA's intention of negotiating a settlement with the Siyaya Group for the reasons she advanced and I said to her that our firm as a creature of instructions would then need to be instructed in writing about what offers PRASA wanted to make to the Siyaya Group.

We – and I don't want to get ahead of you Mr Soni
...[intervenes]

CHAIRPERSON: Yes, no right.

MR MOGASHOA: We discussed the four matters that PRASA said it was in a position to make offers on.

CHAIRPERSON: Ja, Mr Soni can take it from there.

ADV SONI SC: Yes, as you please Chairperson. And then she indicated a figure at which each of the matters must be settled, would that be correct?

10 **MR MOGASHOA:** She indicated figures which she thought would represent offers to be made.

ADV SONI SC: So have a look at 31.1 and that dealt with which case number?

MR MOGASHOA: 31.1 dealt with case number 47597 of 2016.

ADV SONI SC: And what was the amount that was in respect of which a tender had to be made?

MR MOGASHOA: The amount here is R17 178 853.

CHAIRPERSON: Don't lower your voice.

20 **MR MOGASHOA:** Oh yes Mr Chair, okay. I may be beginning to run out of energy, but I am still okay to continue.

CHAIRPERSON: Yes okay.

ADV SONI SC: And then at 31.2 what case number?

MR MOGASHOA: It is case number 47598/2016, and the

amount thought of at the consultation was R15 371 739,87.

ADV SONI SC: And the one at 31.3?

MR MOGASHOA: It is case number 73933/2015 and the figure that PRASA thought of at the time was R8 096 950.

ADV SONI SC: And 31.4?

MR MOGASHOA: The case number is 73934/2015, and the figure that PRASA had in mind at the time was R7 098 491,66.

ADV SONI SC: So in essence orally now your instructions
10 were to settle at those amounts.

MR MOGASHOA: That is what I was told that PRASA wanted to do, make offers in these amounts.

ADV SONI SC: And that you would do in writing to the Siyaya Attorneys.

MR MOGASHOA: I didn't get the question sir?

ADV SONI SC: I say those offers would be made in writing to Siyaya's attorneys?

MR MOGASHOA: Well the point about the – that things be in writing was the point I made at the meeting that I
20 would prefer to be – I was just taking sketchy notes of what I was told because I said I would act on written instructions as soon as I received written instructions from PRASA regarding what it had intended to do.

ADV SONI SC: So although this had been given to you orally you were requiring that PRASA puts in writing what

the amounts are and what the terms of the offer are?

MR MOGASHOA: Correct.

ADV SONI SC: Alright, but at paragraph 32 then you make the point that the Chairperson required a particular clause in regard to the settlement agreement?

MR MOGASHOA: Yes, I make the point that we were asked to include a confidentiality clause in the offers that we were instructed to make and that such offers be made without admission of liability, even that they were purely
10 for settlement purposes.

CHAIRPERSON: Mr Soni I know that we wanted to finish earlier and I know that at some – at one o'clock we thought we would be finished by half past but we haven't and it is not anyone's fault but maybe we should just take the lunch adjournment.

ADV SONI SC: Yes.

CHAIRPERSON: Mr Mogashoa I see you certainly would like us to finish before I am just realising that we at two o'clock and I think that we might find ourselves getting to
20 three o'clock without lunch. Mr Mogashoa have you got a consultation set up for three o'clock?

MR MOGASHOA: Well I don't know how much longer Mr Soni is of the view but I am – if I were to speak for my part I am still comfortable to continue, because I would rather have us finish the proceedings so that then I can head off

to do what I still can, but I am not opposed to lunch being taken.

CHAIRPERSON: Yes, yes, no certainly we will finish today, it is a question of whether we take the lunch now so I think we have tried to finish so that when we take the lunch break we don't come back, but we haven't succeeded and it is not anybody's fault. So maybe let us take the lunch adjournment, come back at three o'clock, hopefully fresher and then that might even assist to speed up
10 because I think we might all be a little exhausted after sitting from about half past ten, quarter past ten except for the tea break. Let's take the lunch adjournment and then we will resume at three o'clock.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV SONI SC: Dingiswayo had said that there was a secret agreement.

20 **MR MOGASHOA:** Yes I remember we debated it.

ADV SONI SC: And you made the point but it was never secret. But I just want to point out that in a sense I suspect that is what he was talking about that the agreement was not to be made available to anybody but parties involved and in particular legal.

MR MOGASHOA: Quite correct it may have been in that context actually.

ADV SONI SC: Yes.

MR MOGASHOA: I am looking at it that way for the first time yes.

ADV SONI SC: I just – I just thought in fairness to him that it was not as if he was making a wild allegation.

MR MOGASHOA: Yes. I fully understand.

ADV SONI SC: Alright now you were then waiting for
10 instructions from them. Did you get written instructions?

MR MOGASHOA: Yes I believe it may have been on the very same day on the 15 December.

ADV SONI SC: Yes.

MR MOGASHOA: That I received written instructions from PRASA I think it will be my very first annexure.

ADV SONI SC: Yes.

MR MOGASHOA: Yes I deal with it on paragraph 33 of my own affidavit.

ADV SONI SC: Yes and that is at page 21 of the bundle – of
20 your bundle that is MM1 am I right?

MR MOGASHOA: Correct this is the one.

ADV SONI SC: So these are the instructions, the written instructions now that you received.

MR MOGASHOA: Correct.

CHAIRPERSON: And they were coming from Mr Lindikhaya

Zide and I see that he signed there as Group Company Secretary?

MR MOGASHOA: Correct. The letter came from his office but I suspect it was transmitted through to us by his secretary or PA **Lebogang Matsimela** [?].

CHAIRPERSON: Hm.

ADV SONI SC: But I think the Chairperson was emphasising Mr Mogashoa that the capacity in which Mr Zide signed was as Group Company Secretary?

10 **MR MOGASHOA**: Correct I see that on page 23.

ADV SONI SC: Yes. And the perhaps relevance of that is you might remember that in the earlier communication on the 28 November in her memorandum she wrote to Mr Zide in his capacity as CEO you might remember. I am just taking you back to that.

MR MOGASHOA: I remember that.

ADV SONI SC: And she made the point as CEO you would have given those instructions.

MR MOGASHOA: She made that point, correct.

20 **ADV SONI SC**: Alright so now we have got Mr Zide's letter to you and are those the instructions you have received?

MR MOGASHOA: These are the instructions I received – that is indeed so Chair.

ADV SONI SC: Yes.

CHAIRPERSON: And were they in line with what you had

been told at the meeting of the 15 December at that meeting where you were told about the amounts for settlement?

MR MOGASHOA: The – the amounts may differ slightly and perhaps a bit more significantly.

CHAIRPERSON: Yes.

MR MOGASHOA: In some instances. But – because I left the meeting with my own written notes.

CHAIRPERSON: Yes.

MR MOGASHOA: I accept that the written instruction then
10 represented properly what PRASA wanted me to do.

CHAIRPERSON: Yes okay.

MR MOGASHOA: Make an offer on.

CHAIRPERSON: Okay. Well it may be important for record purposes to just indicate that this letter from Mr Zide and that in paragraph 2 he say, he confirms that at the meeting of 15 December 217 between yourself and the Chairperson of the interim board you were instructed as follows. So the letter seeks to or purports to confirm what Mr Zide believes you had been told at the meeting.

20 **MR MOGASHOA**: That is indeed so.

CHAIRPERSON: Is that correct?

MR MOGASHOA: That is correct.

CHAIRPERSON: And then they – and – and the first group of cases relates to Siyaya DB Consulting Engineers and in regard to the one matter 74 – case number 74281/2015 your

instructions were to hold that matter in abeyance pending further instructions. Is that right?

MR MOGASHOA: That is correct.

ADV SONI SC: I just want to point out if you look at 31.1 on page 13 of your affidavit there Mr Mogashoa and keep – keep your finger on page 22 you will see the case number there is 479595 – 597 at 31.1.

MR MOGASHOA: You mean the first case?

ADV SONI SC: Yes.

10 **MR MOGASHOA**: Yes.

ADV SONI SC: Alright and you will see that that is reflected as 2.6 on page 22?

MR MOGASHOA: That is indeed so.

ADV SONI SC: And I would just like you to tell the Chairperson what the amount is in 31.1?

MR MOGASHOA: The amount in 31.1. is R17 178 853.00.

ADV SONI SC: And the amount that you were now instructed to settle at?

20 **MR MOGASHOA**: It is – the amount as reflected in paragraph 2.6 of the instruction letter is R19 583 778.42. But I see here – so in the letter of...

CHAIRPERSON: That is including VAT.

MR MOGASHOA: Of instructions it says it is VAT inclusive.

CHAIRPERSON: In your affidavit does it say excluded – VAT excluded?

MR MOGASHOA: I do not say.

CHAIRPERSON: It does not – it does not – oh.

MR MOGASHOA: No I do not say.

CHAIRPERSON: Okay.

MR MOGASHOA: I think it – there was no such distinction made when we were in the meeting of the 15th.

CHAIRPERSON: Yes. Okay.

ADV SONI SC: And the other amounts appear to be the same from 31.2 to 31.4 and the ones at 2.3, 2.4 and 2.5 on
10 page 22.

MR MOGASHOA: That appears to be so yes the amounts seem to be the same. The three remaining amounts.

CHAIRPERSON: Was there anything unusual about the terms on which you were instructed to settle these matters in your experience or was there nothing unusual?

MR MOGASHOA: I am not sure if Chair is referring to the figures themselves or the computation thereof or...

CHAIRPERSON: Whatever it is if there was anything you found unusual in relation to being instructed to settle the
20 matter on these – this matters on these terms. Is there anything you found unusual in your experience as an attorney?

MR MOGASHOA: Well I would avoid talking about the computation of the figures but the – the – it does not happen often that we would be instructed to stipulate in an offer we

make that – that it carries some confidentiality.

CHAIRPERSON: Hm.

MR MOGASHOA: And I am – and I would not be sure what the considerations were.

CHAIRPERSON: Ja.

MR MOGASHOA: At that time but PRASA thought it proper that it places such a condition.

CHAIRPERSON: Hm.

10 **MR MOGASHOA:** On the – on the tender – on the tender itself although as I say it has happened before in some of the matters I have had to deal with in the past.

CHAIRPERSON: Hm.

MR MOGASHOA: That especially if it is an – if it is an offer purely to settle.

CHAIRPERSON: Hm.

MR MOGASHOA: Or if it is an offer of compromise.

CHAIRPERSON: Hm.

MR MOGASHOA: That the details especially if there are other related claimants for example.

20 **CHAIRPERSON:** Hm.

MR MOGASHOA: That perhaps emanate – whose claims emanate from the same course of action.

CHAIRPERSON: Hm.

MR MOGASHOA: It is not unusual or completely unusual for a defendant to want to have separate if one may say

confidential settlements with each of the parties as the case may be.

CHAIRPERSON: Hm.

MR MOGASHOA: We do not – we do not – I do not get to prepare.

CHAIRPERSON: Ja.

MR MOGASHOA: Tenders and say they are confidential if there is ...

CHAIRPERSON: Yes. Yes.

10 **MR MOGASHOA:** I can count the time.

CHAIRPERSON: Yes. And what was the relationship between the amounts on which you instruct – which you were instructed to tender to the other side and the amounts that may have been claimed by the Siyaya Companies in their summons – summonses? Did you take the trouble to check whether – what – how they compared?

MR MOGASHOA: It was my observation Chair that the figures were more or less the same. I mean...

CHAIRPERSON: Yes.

20 **MR MOGASHOA:** You did not have a situation where R15 million was claimed and R3 million was tendered.

CHAIRPERSON: Yes.

MR MOGASHOA: Just by looking at the figures and you compare them to what the total amount claimed is.

CHAIRPERSON: Yes.

MR MOGASHOA: In particulars of claim.

CHAIRPERSON: Yes.

MR MOGASHOA: This may have been amended so...

CHAIRPERSON: Yes.

MR MOGASHOA: The settlements were close to what was claimed.

CHAIRPERSON: Yes.

MR MOGASHOA: And I can safely say so.

CHAIRPERSON: Yes. In your experience is that quite
10 normal when you talk about a settlement? In your
experience – how many years have you – had you been in
practice by then?

MR MOGASHOA: I was admitted in May 2000 so it is 20
years now.

CHAIRPERSON: Ja. So you had about 17 years at the time
of the settlement more or less?

MR MOGASHOA: Correct.

CHAIRPERSON: Yes. In your experience was it quite usual
– has it been usual in your experience to settle – to have
20 matters settled on a basis in terms of which the defendant...

MR MOGASHOA: Is being sued.

CHAIRPERSON: Pays or tenders to pay either the exact
amount claimed or very close to it. Is that something that
you have found quite common in your experience over the
years?

MR MOGASHOA: Settlements would in my view be a product of negotiations between the parties.

CHAIRPERSON: Hm.

MR MOGASHOA: If I were to speak about the extent of our firm's involvement that did not happen. I was not asked – or let me put it differently. I was not involved in the computation.

CHAIRPERSON: Ja.

MR MOGASHOA: Of the final figures and therefore it will be
10 difficult to say now this amount should not have been tendered but that should have.

CHAIRPERSON: Ja.

MR MOGASHOA: I did not do the exercise.

CHAIRPERSON: Yes.

MR MOGASHOA: After I was given such instructions.

CHAIRPERSON: Yes.

MR MOGASHOA: Because I accepted that PRASA was satisfied or where the instructions came from relevant officials were satisfied that what they wanted me to tell them
20 is what they thought PRASA was liable for.

CHAIRPERSON: Yes. No, no that is fine. I was asking a different question and that is where I want you to assist me.

MR MOGASHOA: Yes.

CHAIRPERSON: I have not been in practice – I left practice about 23 years ago.

MR MOGASHOA: Okay.

CHAIRPERSON: So – and when it comes to settlements as you know Judges normally do not get told what the settlement was. So – but my reaction when I noticed that the amounts you were instructed to tender seemed to be exactly the same amounts claimed in the summons at least that was my impression. That did not strike me as – as a settlement as one would normally expect. But maybe it is because I have not been in practice for over the past 23
10 years maybe things have changed. Are you able to assist me to say well things have changed you do not know what is happening out there now, this is normal? My experience was that there would be a kind of – if you talking of a settlement you would be looking at about a very different amount from the amount claimed.

MR MOGASHOA: We generally say that a good settlement is a settlement out of which none of the parties are happy.

CHAIRPERSON: Hm.

MR MOGASHOA: Which means your plaintiff does not get
20 quite what they may have been looking for.

CHAIRPERSON: Hm.

MR MOGASHOA: Or you defendant does not pay – they find themselves paying more than what they may have bargained for. So yes Chair you – you would find that we do not ordinarily normally pay what is claimed for.

CHAIRPERSON: Hm.

MR MOGASHOA: In the particulars of claim.

CHAIRPERSON: Hm. Okay.

ADV SONI SC: So one.

CHAIRPERSON: Mr Soni must - might have better experience because he is still in practice.

ADV SONI SC: Yes I can say that law has not changed since you.

CHAIRPERSON: Ja.

10 **ADV SONI SC:** There is just one other clause that I would like us to look at Mr Mogashoa. It is at page 22 under C.

CHAIRPERSON: Or maybe – maybe you might or might not be able to say it – to comment on this Mr Mogashoa. I am sorry Mr Soni.

MR MOGASHOA: Yes Chair.

CHAIRPERSON: I think Mr Dingiswayo if I am not mistaken said in his affidavit or maybe also in his evidence that this was not a settlement it was capitulation. Do you want to comment on that?

20 **MR MOGASHOA:** I remember seeing that.

CHAIRPERSON: Huh?

MR MOGASHOA: I remember seeing that. Well if you compare the – the figures of the tender to the figures as they may appear in the particulars of claim one would look at it that way that it is a capitulation.

CHAIRPERSON: Hm.

MR MOGASHOA: And I think it is – it is even more confusing when such matters have had some life of being defended.

CHAIRPERSON: Hm.

MR MOGASHOA: And then after two or three years then it is a settlement and it is a settlement of the full amount.

CHAIRPERSON: Hm.

MR MOGASHOA: It can create some uncertainty Chair.

10 **CHAIRPERSON:** Hm. Of course, what one cannot deny is that if indeed PRASA had no defence to the claims it may well have been a reasonable thing to pay at that time and save all the legal costs that would come with the arbitration, is it not? That is if PRASA had no defence.

MR MOGASHOA: I agree, I agree fully with that.

CHAIRPERSON: Ja. Ja.

MR MOGASHOA: If we could not find anything wrong.

CHAIRPERSON: Yes.

MR MOGASHOA: With the invoicing.

20 **CHAIRPERSON:** Yes.

MR MOGASHOA: Or the figures.

CHAIRPERSON: Yes.

MR MOGASHOA: I accept that that yes one would have to...

CHAIRPERSON: Ja.

MR MOGASHOA: Make that kind of a settlement.

CHAIRPERSON: Okay. I am sorry I interrupted you Mr Soni you had a question.

ADV SONI SC: That is – no I have got my point again Chairperson. If you look at paragraph C you might remember the Chairperson asked you was there anything unusual and you have debated that issue with the Chairperson. But have a look at paragraph 2.7 regarding the interest that was to be payable. 2.7 on page 22.

MR MOGASHOA: Correct I see that.

10 **ADV SONI SC:** What does it say?

MR MOGASHOA: Well it simply says that interest must be calculated on the date of issuing the summons instead of being calculated from the date of the issuance of invoices.

ADV SONI SC: Okay. Now based on this instruction what did you do – this written instruction?

MR MOGASHOA: What would I do?

ADV SONI SC: No what did you do?

MR MOGASHOA: Oh yes. Yes.

20 **CHAIRPERSON:** So maybe before that. So to sum up your instructions are tender it is either the amounts claimed in the summons or something more or less the same and tender interest from the date of summons – or the date of – ja from the date of summons that is what it says. So – so far it looks like the only thing that is not mentioned on your instructions is costs. Is that right?

MR MOGASHOA: That is – that is correct.

CHAIRPERSON: Yes. It looks like the instruction letter said nothing about costs?

MR MOGASHOA: The instruction letter indeed did not say anything about costs.

CHAIRPERSON: Yes okay Mr Soni asked you a question about the interest. You might wish to repeat that question about the interest here.

ADV SONI SC: Sorry, I was asking about what happened
10 next Chair.

CHAIRPERSON: Oh, what happened. Yes, ja.

MR MOGASHOA: Oh, yes.

CHAIRPERSON: H'm.

MR MOGASHOA: Oh, yes Chair. What then happened is, I then formulated the tenders in line with this letter of instruction. And I may have sent out the tenders on the same day or the day thereafter.

I remember we produced two documents. One in respect of the Siyaya Rail Solution's matter, the nineteen-thousand...
20 the 19 ...[indistinct] [00:20:42] tender and separately from that and in respect of the three claims under the Siyaya DB Consulting Engineers, we issued another tender.

So it was two tenders. One with details of the three claims and the other one with the details of just this one claim under case number 47/597/2016.

I do not know whether I despatched with the tenders the same day on the 15th or the next day on the 16th but I remember we then managed to structure the tenders in line with the instructions and transmitted them electronically to our opponents.

ADV SONI SC: Yes. And what did they respond to the tenders you have been ...[intervenes]

CHAIRPERSON: We do not have your letter in which you made the tender, hey? I do not see it here.

10 **ADV SONI SC:** No, it is not.

CHAIRPERSON: We do not have. Okay. Alright. But you tendered? You made a tender in accordance with your understanding of your instructions?

MR MOGASHOA: Correct. That is exactly what happened.

CHAIRPERSON: Yes, yes.

MR MOGASHOA: And I think I do say in my affidavit that a day or two thereafter I received a letter which I probably referred to my... in my affidavit.

ADV SONI SC: It is at paragraph 34, MM2.

20 **MR MOGASHOA:** Yes, in which my opponent acknowledges receipt of the tenders made but then they went on to issue... to raise an issue to do with interest because I had not included interest in the amounts that were part of the first tender. I mean, first tenders went out.

ADV SONI SC: Okay. So that their address in paragraph 3

of their letter which is at page 25 of annexures to your documents?

MR MOGASHOA: Correct. That is what the letter is.

ADV SONI SC: Now just read that paragraph out.

CHAIRPERSON: I am sorry.

ADV SONI SC: Oh, sorry.

CHAIRPERSON: Are you at 25?

ADV SONI SC: At 25 Chair.

CHAIRPERSON: Okay.

10 **ADV SONI SC**: And this the opponent's response to Mr Mogashoa's tender.

CHAIRPERSON: Okay we are now dealing with Annexure MM2 which is... which appears at page 24 and it is a letter from Mathopa Attorneys dated 18 December 2017. Yes. Before you read what, Mr Soni says you should need to read. I see in paragraph 1.1 of that letter, that Mathopa Attorneys say:

20 "We represent Siyaya DB Consulting Engineers (Pty) Ltd in liquidation and Siyaya Rail Resolution Pretoria Limited herein after collectively as our client..."

I thought that there different attorneys for the liquidators and different attorneys for Siyaya Rail Solution. Was that not the position?

MR MOGASHOA: No, that was not the position. Chair, you would recall that ...[intervenes]

CHAIRPERSON: That was or that was not?

MR MOGASHOA: It was not the position.

CHAIRPERSON: Okay.

MR MOGASHOA: You would recall that earlier on, I did mention that soon after gaining information that the Siyaya DB was ...[intervenes]

CHAIRPERSON: Under liquidation.

MR MOGASHOA: ...under liquidation. We then asked for the requisite mandating our authority from Mr Mathopa in
10 order that we get satisfied that he continues to act for Siyaya DB even when it is under liquidation and we were provided with such mandates.

CHAIRPERSON: So roundabout when would that have been? You were now talking about 17 December 2017.

MR MOGASHOA: It may have been around May or June of 2017.

CHAIRPERSON: Oh, much earlier?

MR MOGASHOA: Much earlier. Soon after we became of the liquidation process against or in respect of Siyaya DB, in
20 April, around middle April.

CHAIRPERSON: Yes.

MR MOGASHOA: I think we do say that on the 17th of April or so.

CHAIRPERSON: Ja, but I thought Mr Botes, when he gave evidence here and I thought I read in the papers, that at the

time he was talking to the PRASA Chairperson, at the time Mr Botes was talking to the PRASA Chairperson and there was communication about settlements, which I think would have been around November/December.

Around that time. I thought Mr Botes said there was a Mr Crouse or somebody who I thought represented the liquidators.

And the impression I had was that Crouse Attorneys represented the liquidators and Mathopa represented another entity. That is why I am picking this up and I so surprised by it.

ADV SONI SC: Yes. Ja.

MR MOGASHOA: Yes, but we... soon after gaining knowledge of the fact that the DB or Siyaya DB aspect of the Siyaya Group of Companies had been placed under liquidation, we, naturally, approached Mr Mathopa and enquired from him if he continued to act on their behalf, given that they may now be under a different ...[intervenes]

CHAIRPERSON: Under somebody else's control.

20 **MR MOGASHOA:** ...legal personality. Under somebody else's control and so forth. And I think after a while, he came back to us. I just do not have the documents in front of me.

But I remember very well because we were not going to move on litigating with him in circumstances where our client

was not satisfied that he continues to enjoy the mandate of the Siyaya DB Consultancy which under liquidation at the time.

CHAIRPERSON: So is the position that earlier on Mathopa Attorneys represented all the Siyaya companies that are... were involved in these claims initially?

MR MOGASHOA: That has always been the case. Correct.

CHAIRPERSON: And then you say, at a certain stage, April 2017, you became aware that Siyaya DB Consulting
10 Engineers was under liquidation and you sought proof of authority and that was supplied in due course?

MR MOGASHOA: It was made available. Correct Chair.

CHAIRPERSON: Yes. Now, does that mean there are no other attorneys that, as far as you know, ever represented one of the Siyaya or one of the Siyaya companies in regard to these claims while you were involved with PRASA?

MR MOGASHOA: Around the time, subpoenas were issued by the Liquidation Commission or Insolvency Commission as we may we want to call them.

20 **CHAIRPERSON:** The inquiry, ja.

MR MOGASHOA: There was a law firm that had issued those letters on behalf of the liquidators.

CHAIRPERSON: H'm.

MR MOGASHOA: But our office continued to communicate with Mr Mathopa's office on the basis that his firm still

represented the company in the liquidation at Siyaya.

CHAIRPERSON: Oh.

MR MOGASHOA: The Siyaya Rails Solutions Company.

CHAIRPERSON: And Mr Botes was... had been briefed by Mathopa Attorneys?

MR MOGASHOA: That was my impression.

CHAIRPERSON: Ja, okay.

MR MOGASHOA: But if you look at communication around the time the offers were accepted, Mr Botes seems to now
10 make a distinction between the company in liquidation and Siyaya Rails Solutions.

And I suppose he went on to provide us with two different accounting details or bank account details into which PRASA would have had to pay the amounts.

And this was simple because he says that the other company ...[intervenes]

CHAIRPERSON: That is what I understood there ...[intervenes]

MR MOGASHOA: ...had to be paid through a different trust
20 account than Mathopa's as they have been the case in the Siyaya Rails Solutions case.

CHAIRPERSON: H'm-h'm.

ADV SONI SC: Well, Chairperson you have picked up something very important and I must apologise for not picking it up but if we look at page 27, you will see that this

letter from Mathopa says that:

“The amounts must be paid into Mr Crouse’s trust account...”

CHAIRPERSON: Oh, yes.

ADV SONI SC: At the bottom of page 27 Chairperson.

CHAIRPERSON: Yes.

ADV SONI SC: Both the amounts must be paid into Mr Crouse’s trust account.

CHAIRPERSON: Are both amounts ...[intervenes]

10 **ADV SONI SC**: Yes.

CHAIRPERSON: That is very strange.

ADV SONI SC: It is. And I am sorry I did not pick that up Chairperson.

CHAIRPERSON: Yes. Can you see that Mr Mogashoa?

MR MOGASHOA: I can see that, yes. It phase in both instances the account of Crouse Trust Account. It may be different account numbers, although I do not know. But yes, I see paragraph 9, 9.1 and 9.2.

20 **CHAIRPERSON**: Would you know whether Crouse Incorporated were attorneys or was it a firm of liquidators or what? Would you know that or not?

MR MOGASHOA: I am not sure about that.

CHAIRPERSON: Yes. You never dealt with them directly?

MR MOGASHOA: I have not dealt with them until that time that we attended the Commission’s inquiry hearings in

August.

CHAIRPERSON: H'm. Ja, it is really strange.

ADV SONI SC: Ja, it is.

CHAIRPERSON: Ja.

ADV SONI SC: Yes, Chairperson.

CHAIRPERSON: Normally, attorneys would let payment be made into their trust accounts to pass the matter to the client.

ADV SONI SC: Yes.

10 **CHAIRPERSON**: Or, otherwise, I guess it would go to the client but Crouse is not the client.

ADV SONI SC: Yes.

MR MOGASHOA: But a distinction is made because if you look at paragraph 9.1 Chair.

CHAIRPERSON: H'm?

MR MOGASHOA: It says here DB in liquidation. So it is not clear, I suppose to all of us.

CHAIRPERSON: Where?

MR MOGASHOA: Paragraph 9.2.

20 **CHAIRPERSON**: You see, paragraph 9.1 relates to a company that was in liquidation. Paragraph 9.2 relates to a company that was not in liquidation but payments to both companies was to be made to the same entity, entity's trust account, Crouse Incorporated.

MR MOGASHOA: Yes, I see it.

CHAIRPERSON: It is strange that in relation to the litigation, Mathopa Attorneys acts for both and yet when it comes to payment, payment has to... in regard to both, must go to somebody else that appears or seem to know nothing about. At least, you knew nothing about it.

MR MOGASHOA: I take note.

CHAIRPERSON: Crouse Incorporated.

MR MOGASHOA: I take the point Chair.

CHAIRPERSON: Ja.

10 **ADV SONI SC:** Perhaps I should look a little more carefully at the papers for me.

CHAIRPERSON: Yes.

ADV SONI SC: Because I know there is a letter that Judge Makhubele referred to from Crouse Attorneys.

CHAIRPERSON: H'm. Yes.

ADV SONI SC: Saying that she had received a letter from them.

CHAIRPERSON: Yes.

20 **ADV SONI SC:** I just cannot put my finger on where exactly it is.

CHAIRPERSON: Ja, we might to have to go and check. Ja, ja. Yes?

ADV SONI SC: I just want to go to paragraph 3 now Mr Mogashoa at page 25. Because this is what Mr Mathopa writes to you. Could you read that into the record?

MR MOGASHOA: He says on paragraph 3 of his letter.

ADV SONI SC: Yes.

MR MOGASHOA:

“Your client, PRASA, did not instruct you to submit an offer or tender to our clients in respect of the capital amounts only.

Your client specific and express instruction to you, was to submit to an offer or tender to our clients which provides for payment of interest a temporary rate at a rate of 9% per annum, calculated from the date or dates upon which the respective summons were served on the clients...”

10

ADV SONI SC: What was your reaction upon receiving that letter? You had been instructed to issue a tender which you did and now you are told that the tender is not in terms of your instructions. Well, what was your reaction to that?

MR MOGASHOA: In fact, I mention in my first ...[intervenes]

ADV SONI SC: You deal with it in paragraph 34 ...[intervenes]

20 **MR MOGASHOA**: Yes.

ADV SONI SC: ...off your affidavit.

MR MOGASHOA: And that is on page...?

ADV SONI SC: At page 14. Just after MM2 which is in bold.

MR MOGASHOA: [No audible reply]

ADV SONI SC: Do you see it?

MR MOGASHOA: Yes, yes, yes. It is the paragraph... paragraph 34.

CHAIRPERSON: I am sorry. You are speaking away from the mic.

MR MOGASHOA: Oh, yes.

CHAIRPERSON: Start afresh, so that what you say will be recorded.

MR MOGASHOA: Okay Chair. Must I continue now?

CHAIRPERSON: Yes. Just... but start your response
10 afresh, because I do not think it was captured. Whatever
you said, I do not think it was captured earlier.

MR MOGASHOA: Okay. Paragraph 34 of my affidavit... I think on the paragraphs, I am simple summarising what I am saying was a bit of a challenge for me in that I had made a tender and when my opponent writes back to counter-propose, so to speak, reference is made to the effect that my tender is not in line with the instructions I had expressly received from my client.

But I think I made the point as well that I said to my
20 opponents that I would, in any event, irrespective, just go
back to my client and confirm their instructions in as far as
the issue of interest is concerned.

ADV SONI SC: Yes, but I am raising a slightly different point.

MR MOGASHOA: Yes.

ADV SONI SC: How would they know what your client had instructed you to do? I mean, just... we know now that they did know. Did you ever find out?

MR MOGASHOA: I was equally taken aback by that. You may see that at the end of paragraph... I am not sure if I took that issue up with them.

ADV SONI SC: I do not think you did. Not... certainly not on your affidavit.

MR MOGASHOA: I do not think I did in writing. Or maybe it
10 is correspondence I did not want to at the time deal with. But yes, I found it a bit troublesome that a... that my client's instructions were not only known to me but from the reading of the letter of Mr Mathopa, they as well had been placed in possession of the same letter that was addressed to me.

ADV SONI SC: So, can I give you some background to that? When Mr Botes gave evidence, he said that this letter had been Whatsapp'd to him. He received this letter via Whatsapp from the chairperson of the board. That was his evidence.

20 **MR MOGASHOA:** Well, okay. Alright. I did not get to see any of the submissions he made.

ADV SONI SC: No, no, no. I understand.

MR MOGASHOA: It explains how the letter got to the chair.

ADV SONI SC: Alright. Now, having received that letter, the MM2 from Mr Mathopa, what did you do?

MR MOGASHOA: I then immediately approached Mr Zide, client and I indicated... I mean, I may... if you allow me to get to number 3?

ADV SONI SC: Yes.

MR MOGASHOA: Because I may have said to client that it is concerning.

ADV SONI SC: That is at page 29. MM3 was at page 29. And your email is the second email on that page.

MR MOGASHOA: Alright. I think the attachment does not
10 quite deal with the concern I had.

ADV SONI SC: Yes.

MR MOGASHOA: I may have simple forwarded the letter to client and client then gave me instructions to investigate how to incorporate the interest that is referred in their initial letter of instructions.

ADV SONI SC: Okay. And did you do that?

MR MOGASHOA: Yes, we then went on to instruct our accountants to give us a table of such figures as we... it was required that they include interest. They made such table
20 available to us and I forwarded the figures to Mr Zide with recommendations that I have or I had satisfied myself with the interest incorporated.

And his instructions were that I then should proceed to revise the offers to include the interest that then was calculated on the basis of the particular amounts.

ADV SONI SC: Now that offer then was sent to Mathopo Attorneys.

MR MOGASHOA: We then sent the offers to Mathopo.

ADV SONI SC: What was the response to the offer? Well, firstly, from whom did you get a response to that offer?

MR MOGASHOA: I may have received a response from Mr Botes.

ADV SONI SC: If you look at MM4 on page 30, this is the
10 top half of MM4, page 30.

MR MOGASHOA: Yes, I see that.

ADV SONI SC: Now that is an email from Mr Botes dated when?

MR MOGASHOA: Dated the 21 December.

ADV SONI SC: And to whom is it addressed?

MR MOGASHOA: It was addressed to Tshepo Mathopo but we are carbon copied.

ADV SONI SC: Well, just read the names of all the people who are carbon copied.

20 **MR MOGASHOA:** Okay, people who are carbon copied are Tshepo Mathopo, Nxola Zimbebe, Madimpe Mogashoa, T A M Makhubele.

ADV SONI SC: And who was that?

MR MOGASHOA: This would be the Chairperson.

ADV SONI SC: Yes. And you will see there is also Mr Krause who is ...[intervenes]

MR MOGASHOA: Mr Krause is cc'd there as well, yes. And Hannes from [indistinct] **41.44.**

ADV SONI SC: Yes. Now in essence what does Mr Botes say in regard to – well, it is a strange thing, the email is from Mr Botes but if you look at the bottom, who signs it?

MR MOGASHOA: Yes, I see it says Mr Botes.

ADV SONI SC: Yes. Now what is the essence of that
10 email?

MR MOGASHOA: I see that it refers to the offers we made. The first point they make, the email makes is that PRASA's settlement offers are accepted. The email further makes reference to the issue of interest and I think it repeats the same debate I had had with Mr Mathopo around interest and inclusion of interest in the figures. Mr Botes goes on to suggest that payments be made into Krause Inc's trust account and that he hopes that our client will expedite the payment issue.

20 **ADV SONI SC:** Yes. Now what was the next thing that happened in regard to those communications and you will actually find that on – in MM5 at page 31.

MR MOGASHOA: Alright, what I see on page 81, if I may proceed?

ADV SONI SC: Yes, yes.

MR MOGASHOA: What I see on page 31, annexure MM5 is that on the same day I received an email from the Chairperson in which he says that:

“Dear Madimpe, thank you for the update. Mr Mogashoa please attend to finalise the matter with regards to payment.”

And this may have been – her email was in response to mine that I had sent earlier.

ADV SONI SC: Is that the email just under that?

10 **MR MOGASHOA:** Yes, in which I say – oh, but this is an email address to Mr Botes.

ADV SONI SC: I am sorry.

MR MOGASHOA: And everyone else but if I send this in reply to Mr Botes then the Chairperson would have received it.

ADV SONI SC: Yes.

MR MOGASHOA: Because she was carbon copied.

ADV SONI SC: I should have referred you to – go back to page 30 and in the bottom half you will find an email from
20 yourself.

MR MOGASHOA: Oh yes, that is MM4.

ADV SONI SC: Yes. And what does that say? Well, it does not say to whom it is addressed, it seems it was sent from your iPhone.

MR MOGASHOA: It could be it says:

“Good morning, sirs...”

That is the 10/23 email.

ADV SONI SC: Yes.

MR MOGASHOA: It says:

“Good morning, sirs, attached are revised offers in respect of matters, case numbers...”

And it is the four case numbers in respect of the offers we made.

10 “Kindly obtain instructions from your clients and revert.”

ADV SONI SC: And it is in response to that offer that Mr Botes says we accept the offer.

MR MOGASHOA: So then I think then Mr Botes’ email of 11/21 is in response to mine at 10.23.

ADV SONI SC: Yes.

MR MOGASHOA: Then I then see that I – what happened here? I am looking at the last, last email on page 30, 11/25.

ADV SONI SC: Ja, that email is incomplete, it is not...

20 **MR MOGASHOA:** Yes.

ADV SONI SC: At any rate, let us not get bogged down. What we do know was that the offers were accepted and the Chairperson told MR MOGASHOA to deal with the question of payment.

MR MOGASHOA: Correct.

CHAIRPERSON: Mathopo Attorneys raised the issue of interest in regard – in response to your first offer or tender but I thought that the instructions you had received did include that you must tender a payment of interest from date of summons. Is the position that your first tender did not deal at all with interest or is it that you said interest would be calculated from a date other than the one that Mathopo Attorneys understood you to have instructed to work on.

10 **MR MOGASHOA:** I did not, the offers did not at all deal with interest and I think it was just inadvertent on my part.

CHAIRPERSON: Yes because ...[intervenes]

MR MOGASHOA: Not to include interest.

CHAIRPERSON: Yes.

MR MOGASHOA: I may have missed that part.

CHAIRPERSON: Yes.

MR MOGASHOA: When I formulated the offers at that time.

20 **CHAIRPERSON:** Yes. Yes, but subsequently you saw that it was there?

MR MOGASHOA: I saw that it was there but you would see that I contacted clients to say look, this is what my opponents are saying, I will just rework to include interest.

CHAIRPERSON: Yes, yes. Okay.

ADV SONI SC: Alright, then you says that at paragraph

36 on the 8 January you received a letter from Mr Mathopo indicating that they have a proposal in respect of the matter that was not included in the settlement. Remember, there were five matters, four were settled.

MR MOGASHOA: Correct.

ADV SONI SC: What did you do with that offer?

MR MOGASHOA: You mean the letter?

ADV SONI SC: I mean that letter.

MR MOGASHOA: I sent it to client.

10 **ADV SONI SC:** And what was the response from client?

MR MOGASHOA: Let me see where my [indistinct – dropping voice] that. And I believe that the offer made proposals on how we could deal with that particular case, it is case 74281/2015. I say that:

“Despite that this letter was forwarded to PRASA for their consideration and instructions no communication has since come forth from client.”

ADV SONI SC: Okay. Now the rest of paragraphs 37, 38 and 39 – oh, sorry, 38 and 39, deal with the fact that
20 certain communications were made to the arbitrator relating to these offers.

MR MOGASHOA: Yes, that is the case.

ADV SONI SC: And then in paragraph 39 you deal with a message you received from MR MOGASHOA. What was that in connection with at paragraph 39?

MR MOGASHOA: Okay, Chair, the point you made earlier about the fact that the rest of the paragraphs, 37 and 38, dealt mainly with the communication between my office and that of Mr Mathopo and further with communication between Mr Mathopo's office and that of retired Judge Brand. Then come into flow with what I say in paragraph 39. In essence, Mr Mathopo was getting frustrated with the fact that PRASA was not making the payments following the acceptance of the offers and he then started
10 engaging with the judge in order that we make – and in anticipation of course, further, of the arbitration dates that we are approaching in March, he suggested that we – the parties approach Judge Brand and present to him that the parties have arrived at settlements in respect of some or most of the matters and that they wish that such settlements be made arbitrator's awards. I imagine at the time the thinking was that they then go on to make them orders of court if the issue of nonpayment continued.

ADV SONI SC: Alright, so that communication is sent to
20 you, they want to make the settlement into arbitration awards.

MR MOGASHOA: Correct, so it will be communication with Judge Brand but I am cc'd and copied.

ADV SONI SC: Yes. What did you do when you were copied?

MR MOGASHOA: So every time I would received such communication I would forward all of the communication to MR MOGASHOA, so ...[intervenes]

ADV SONI SC: And in regard to that communication what was the communication from him to you?

MR MOGASHOA: In paragraph 39 I then deal with – I had been – Judge Brand was in Gauteng at some point and I think he had other matters he was running with. Mr Botes or Advocate Botes managed to arrange that the parties see
10 him on one particular day.

Now it has always been my position that I was not going to act or do anything unless I am instructed. So I think it is a text message that I am referring to in my paragraph 39 that I received from Mr. Mogashoa complaining that that day I was then instructed to proceed and participate in submissions to Judge Brand and make the settlements arbitrator's awards as consented to by both parties.

ADV SONI SC: Okay. Have a look at page 41, that the
20 message you referred to at paragraph 39, page 41.

MR MOGASHOA: Correct, the first message.

ADV SONI SC: Yes and what is that message show?

MR MOGASHOA: The message was from Mr Zide and it was addressed to me and it says that yes, Mogashoa should confirm that the settlement be made an order and

proceed with a question on the one that had outstanding issues.

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

MR MOGASHOA: Mr Zide goes on to say that that is from the Chairperson.

ADV SONI SC: So what did you understand from that?

MR MOGASHOA: I understood that my instructions were that I proceed to see Judge Brand with Mr Botes and make the settlements the arbitrator's award or consent thereto
10 and further, that we – I present to the retired Judge that the only outstanding matter that the parties had to deal with, perhaps at the schedule arbitration was that that parties consent.

ADV SONI SC: And from whom was that instruction that it be made an order – I mean an arbitration award?

MR MOGASHOA: From Mr Zide's email, the text that I am looking at here, annexure MM9, the message by him to me may have been from the Chairperson. It is from the Chairperson because he says that – he says that it is a
20 message from the Chairperson.

ADV SONI SC: Yes.

MR MOGASHOA: From his second text to me.

ADV SONI SC: So in a direct answer to my question, from whom was the instruction that it be made an arbitration award?

MR MOGASHOA: From the Chairperson.

ADV SONI SC: Yes.

MR MOGASHOA: Then you say that there were further instructions given to you and these were at paragraph – I am sorry, at page 42, MM10. Oh sorry, not instructions, but you then received applications to make the arbitration awards orders of court.

ADV SONI SC: Yes, I think the issue of ...[intervenes]

MR MOGASHOA: That you deal with at paragraph 40.

10 **ADV SONI SC:** Yes, the issue of nonpayment continued and then we were served with the - on behalf of PRASA we were served with the applications to make ...[intervenes]

CHAIRPERSON: I am sure Mr Soni you can jump, go to that strange feature about that because none of that is disputed.

MR MOGASHOA: Okay.

ADV SONI SC: Yes.

CHAIRPERSON: What happened, ja.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** There was just the strange feature about the authority. I think that is the only thing.

ADV SONI SC: Yes.

CHAIRPERSON: As far as I can think of that is of importance, ja.

ADV SONI SC: Ja. I just do one small thing and then I

will explain why I am going there.

CHAIRPERSON: No, that is fine.

ADV SONI SC: At paragraph 41 you say you received a call from Mr Dingiswayo.

MR MOGASHOA: Yes, on the 5 March.

ADV SONI SC: And what was that call about?

MR MOGASHOA: He said to me that he had received – I think he was talking to a colleague, not at PRASA though, on issues unrelated and the colleague made him aware that
10 Siyaya had enrolled four matters ...[intervenes]

ADV SONI SC: Well, those are the matters that you had sent to PRASA that we had just talked about.

MR MOGASHOA: I sent the four applications to PRASA already, to Mr Zide's office to say here are the applications what do you want to ...[intervenes]

ADV SONI SC: After your conversation with Mr Dingiswayo did you and he hold a meeting?

MR MOGASHOA: Yes, Mr Dingiswayo then asked for copies of the applications which I forwarded to him
20 accordingly and then I was invited to a meeting at which I think Mr Molepo, who was the Acting CEO at the time, was present and Ms Ngoye was present and Mr Dingiswayo was also present there. I went to [inaudible – speaking simultaneously]

ADV SONI SC: You say in paragraph 42 Mr Zide was also

present.

MR MOGASHOA: Mr Zide was part of the meeting, yes.

ADV SONI SC: Yes. And what happened at that meeting?

MR MOGASHOA: At the meeting legal presented to Mr Molepo that the settlements may have been referred to in the applications themselves that had been entered into without legal involvement, one. And two, that the Chairperson did not have the authority to get PRASA into such settlements as may have been alluded to in the
10 applications themselves.

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

CHAIRPERSON: Was this on the 8 March 2018 in terms of timeframe? I see it seemed to say so around that time.

MR MOGASHOA: Yes, ja, I think the date of the meeting is 8 March 2018.

CHAIRPERSON: Okay.

MR MOGASHOA: According to my affidavit.

ADV SONI SC: And all of this happened on the 8 March that you were talking about now.

20 **MR MOGASHOA:** I may have received Dingiswayo's call earlier but the meeting took place on the 8 March.

ADV SONI SC: On the 8th. Yes, you say you met him on – I mean, you got a call from him on the 5th.

MR MOGASHOA: Oh yes.

ADV SONI SC: So this is the 8th. Now in light of the fact

that you had been part of the settlement on the basis of instructions you received from the Chairperson, what was your further involvement in this matter?

MR MOGASHOA: Ms Ngoye made a valid point at the meeting that another law firm be instructed to carry on with the instructions, more so because there was a need for them, an identified need at the time for them to oppose the applications which the applicant had enrolled in respect of the four matters, I can't remember what the date
10 was...[intervenes].

ADV SONI SC: It was the 9th.

MR MOGASHOA: Ja the applications to be heard because obviously I was – I'm the one who had been instructed in all of the processes that led to that settlement at the time...[intervenes].

ADV SONI SC: And what was the conclusion at the end, regarding your involvement?

MR MOGASHOA: The conclusion was that another law firm would be briefed and that I should assist with handing
20 over my own set of papers to this law firm, I think it was Bowman's and that is exactly what our firm did. We filed the relevant notices of...[intervenes].

ADV SONI SC: And you withdrew formally?

MR MOGASHOA: We withdrew formally correct.

ADV SONI SC: You have no further knowledge of what

happened, I mean, no personal knowledge of what happened in this matter in Court?

MR MOGASHOA: Well if my recollection serves me well, there may have been denied, I think the opposed – the applications but orders were granted, I believe, but they rescinded such order or orders, subsequently and I'm not sure where the matters are now, as we speak.

ADV SONI SC: We'll get to that in a moment but when the application to make the arbitration awards orders of Court was made you were not representing PRASA?
10

MR MOGASHOA: I stopped representing PRASA on the 8th...[intervenes].

ADV SONI SC: On the day before.

MR MOGASHOA: The applications were in our possession already.

ADV SONI SC: Yes.

MR MOGASHOA: And then PRASA opted to instruct another law firm to proceed...[intervenes].

ADV SONI SC: No, no I understand we've been through that, I'm just asking in the Court process itself, on the 9th, you had no role in it?
20

MR MOGASHOA: We were not involved.

ADV SONI SC: And that's all – that's the extent to which your personal knowledge relating to the Siyaya matters extends?

MR MOGASHOA: That is correct.

ADV SONI SC: Now, you make the point right finally that all of this is based – what's contained in your affidavit is based on the documents that were in your possession at the time you made this affidavit?

MR MOGASHOA: Correct, I had to pull-out certain portions of the files from archives, in order to prepare the said evidence.

ADV SONI SC: Chairperson that is – those are the
10 questions I have for Mr Mogashoa, having regard to the fact that, effectively, from the 8th, he played no further role in this matter.

CHAIRPERSON: No that's fine, I think I – it didn't occur to me that at the time of the application before, I think an acting Judge, that he was no longer involved.

ADV SONI SC: Yes.

CHAIRPERSON: So, when I referred to that special feature, I was talking about something that happened in Court, thinking he would have still been part of it.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: No, so he wasn't. Now, you withdrew, either on the 8th of March as the attorney before Court for PRASA in regard to the Siyaya matters or soon after the 8th of March?

MR MOGASHOA: It may very well be that we filed our

withdrawals on the same day. If Mr Soni is right in suggesting that the applications were to be heard on the 9th.

CHAIRPERSON: Ja, I think that's what we have been told. Now, when had you last interacted with the PRASA Chairperson by then? Did you interact with her after the meeting of the 15th of December, between that date and the 8th of March?

MR MOGASHOA: The only interaction with her would be
10 this email that she wrote to me.

CHAIRPERSON: Correspondence ja.

MR MOGASHOA: Correspondence ja.

CHAIRPERSON: But there was no meeting?

MR MOGASHOA: No there was no...[intervenes].

CHAIRPERSON: And no speaking on the phone with her?

MR MOGASHOA: We did not speak on the phone either.

CHAIRPERSON: You did not speak on the phone?

MR MOGASHOA: No.

CHAIRPERSON: What made you accept, discussing the
20 Siyaya matters with the Legal Department on the 8th despite the fact that you had been instructed by the PRASA Chairperson, previously not to discuss those matters with the Legal Department?

MR MOGASHOA: I think part of it would be – would have been the frustrations I was experiencing in getting to know

from PRASA what the firm was to do with the four applications because up until that point, I had not received any indication of any kind whatsoever what PRASA intended to do with the applications and I had no reason not to want to cooperate with Mr Dingiswayo, when he called and asked about the applications because we had the applications in our possession.

CHAIRPERSON: But what I'm talking about is, I would have expected that given the instruction that you told me
10 about, which you said came from the PRASA Chairperson to you, not to discuss the Siyaya claims with PRASA's Legal Department people, I would have expected that when Mr Dingiswayo approached you and sought to make an arrangement, you would have gone back to the PRASA Chairperson to say, you said I mustn't talk to the Legal Department, they've phoned me, they want a meeting, do I stick to that instruction or has something changed?

MR MOGASHOA: At the time...[intervenes].

CHAIRPERSON: Mr Dingiswayo knew that as well
20 because you told him.

MR MOGASHOA: Yes, at the time, Chair, and I think it must be taken into account that I was not talking to the Chairperson directly, whether in writing in email correspondence or otherwise. I had been communicating with or through the office of the Group Company Secretary,

Mr Zide [?], it would have been irresponsible of me when, at the time, I received a call from Mr Dingiswayo, it would have been irresponsible of me to completely ignore what he had called me about, given the fact that I wasn't receiving any instructions. I was actually relieved that someone from PRASA called me about the matter. We – I obviously may have asked him what was going on because I wasn't receiving any feedback or instructions from the channel or channels that I had gotten used to between
10 December and March when I started talking to him again and as I say, I then decided to forward the applications to him without asking any further questions because I expected him, as someone I knew, was still at PRASA, to take responsible decisions around the applications. I had not been briefed on any aspect to do with the applications, I was worried that, then PRASA was going to be unrepresented because I was not going to go to Court the next day without specific instructions on what my verbal address needed to do.

20 **CHAIRPERSON:** We know that the acceptance of the settlement agreement or the settlement offer was made around 17, 18, 20, 21 December, is that right?

MR MOGASHOA: Correct.

CHAIRPERSON: Now, after the offer had been accepted there was that communication about payment, Matjoko

saying, you know, please attend to payment urgently and I think you would have sought instructions from the Company Secretary, is that right?

MR MOGASHOA: Correct.

CHAIRPERSON: Or maybe, let me clarify that. Initially you were meant to communicate with the Board through the office of the CEO when Mr Zide was the acting CEO, is that right?

MR MOGASHOA: At the meeting of the 15th of December I
10 was not aware that Mr Zide had stopped acting as the –
sorry Chair, as the Group CEO of PRASA but the
instruction to me by the Chairperson was that any
communication must be through Mr Zide's office.

CHAIRPERSON: Yes, my understanding is that when that instruction – or let me put it this way, when that instruction was made, was Mr Zide not acting CEO anymore?

MR MOGASHOA: I was under the impression that he was but I think Mr Soni...[intervenes].

CHAIRPERSON: Was it not on the – was it not at the
20 meeting of the 14 – of the 4th of December?

MR MOGASHOA: At the meeting of the 4th of December he was still the acting CEO.

CHAIRPERSON: Yes, but when you were given this instruction, was it not at that meeting, or was it at the meeting of the 15th?

MR MOGASHOA: It...[intervenes].

CHAIRPERSON: No, no, it was at the meeting of the 15th, I think because you then phoned Mr Dingiswayo on the 15th, I think. I think you said that, that instruction was given to you at the meeting of the 15th.

MR MOGASHOA: It was given to me at the meeting of the 15th not before.

CHAIRPERSON: Yes, but you are saying that, at that time, you were under the impression that Mr Zide was still
10 acting CEO?

MR MOGASHOA: I was under the impression that Mr Zide was the acting CEO.

CHAIRPERSON: Still acting ja.

MR MOGASHOA: But I know him, I know him to be the – to have been the Company Secretary.

CHAIRPERSON: Yes.

MR MOGASHOA: So, when the Chairperson was giving instructions on how communication would be dealt with, I think, to me it was more Mr Zide as the person who works
20 with the Board, more than it was important for me to make that distinction whether he was still acting as the Group CEO.

CHAIRPERSON: Ja.

MR MOGASHOA: Or he had reverted back to his original position.

CHAIRPERSON: Yes, but from January had you asked for any instructions from PRASA and you didn't get a response?

MR MOGASHOA: The – I think Mr Soni took me through one attachment which I received by text, that's the meeting between – the meeting that the parties had decided to hold with Mr Brandt to confirm some of the settlements but otherwise I would – so I would – those are the instructions I received because I had to take instructions on what
10 PRASA wanted me to do with the fact that the plaintiff wanted to make those settlements arbitrators awards. The other normal communication would have had to be about payments that the Siyaya Group was complaining were not forthcoming and then the next big thing then was the applications themselves which I forwarded to PRASA through the office of Mr Zide and what then transpired was, Mr Dingiswayo's call and then the handing over of such applications to him.

CHAIRPERSON: The meeting of the 8th of March, you say
20 it included Mr Zide?

MR MOGASHOA: Mr Zide was present.

CHAIRPERSON: Yes, so – you see I was just concerned that you didn't go back to the Chairperson when, now it seemed that you were going to meet with – to discuss Siyaya matters with people that he said you mustn't

discuss them with but there was Mr Zide who was there and that is what – that made a difference to you.

MR MOGASHOA: Mr Zide was present then yes, it made a difference to me.

CHAIRPERSON: Ja okay, no that's fine.

MR MOGASHOA: And possibly when – and I'm probably correct in making this suggestion, when Mr Dingiswayo asked that I forward the applications, we, in all probabilities, CC'd Mr Zide because I had no reason to
10 want to not have him know that legal had asked for those applications from me.

CHAIRPERSON: Ja, did you ever deal with Mr Molepo, I think he was the acting CEO after Mr Zide ceased to be acting CEO.

MR MOGASHOA: No, no, no I just – the first encounter Chair, was that meeting and nothing ever since.

CHAIRPERSON: Oh, was he present at the meeting of the 8th?

MR MOGASHOA: He was, I think the meeting was called
20 by his office.

CHAIRPERSON: Oh, Mr Molepo?

MR MOGASHOA: Ja, well seemingly at the insistence of Legal.

CHAIRPERSON: Oh okay.

MR MOGASHOA: Which had become aware about the

publications.

CHAIRPERSON: Yes, yes, are you able to tell what his attitude was to this settlement – this settlements that had happened or are you not able to tell from the discussions at the meeting of the 8th or the whole topic was different by that time?

MR MOGASHOA: I think he was concerned because he did not have any trouble having legal proceed with the opposition that they had intended mounting against the
10 applications. So, in as far – well to that extent one thinks that he agreed or he was in agreement with legal that a different approach would be taken.

CHAIRPERSON: Ja, the idea that the settlement agreements should be made arbitration awards, was that part of the settlement agreement, was there a clause in the settlement agreement that said that? It just seems strange to me that, unless it's included in a settlement agreement, it seems that I'm going to agree that I'm going to pay you and we sign and then I also agree that, let's make this an
20 order of Court but if, at the time we made this settlement agreement that was part of the settlement agreement that may be different because otherwise if it's not part of the settlement agreement if I have agreed that I'm going to pay you, then I pay you within the time that I've agreed to pay you and of course if I fail to pay you, you might have cause

to want to make the settlement agreement an arbitration award or order of Court but normally you'd wait until you see whether compliant. I just find it strange that PRASA – you were instructed to agree to having the settlement agreements made orders or arbitration awards.

MR MOGASHOA: I think if you look at the timelines, Chair, if we accept that the settlements were agreed to around the 21st of December.

CHAIRPERSON: December ja.

10 **MR MOGASHOA:** This is now beginning of February that Mr Matjoko is beginning to complain.

CHAIRPERSON: That the period of payment had expired?

MR MOGASHOA: Well reasonable period had expired although...[intervenens].

CHAIRPERSON: Was there not a specific period mentioned, like 30 days?

MR MOGASHOA: I doubt that the tenders had stipulated any period because otherwise we would be making a lot of reference to the periods referred to in the tenders. So,
20 they probably thought that whatever number of days that may have lapsed since they accepted the offer were enough to have them start complaining about the fact that they're not getting paid.

CHAIRPERSON: Okay, no that's fine, anything arising?

ADV SONI SC: Nothing else.

CHAIRPERSON: Nothing else, thank you very much Mr Mogashoa for having come to assist the Commission, we appreciate that you may have been like us, you thought this might have taken two hours, it ended up taking the whole day but we appreciate that you came and you have given your evidence, thank you very much.

MR MOGASHOA: Thank you Chair and I'm glad that I could be of some assistance.

CHAIRPERSON: Yes, you are excused.

10 **MR MOGASHOA:** Thank you very much.

CHAIRPERSON: We are going to adjourn for the day and tomorrow the sitting will start at ten, we adjourn.

INQUIRY ADJOURNS TO 13 AUGUST 2020