

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

**28 SEPTEMBER 2020**

**DAY 272**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 28 SEPTEMBER 2020**

**CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

**ADV PRETORIUS SC:** Good morning Chair.

**CHAIRPERSON:** Are we ready?

**ADV PRETORIUS SC:** Yes Chair you will recall that when we were dealing with the Free State Asbestos Project Mr Mokhesi did not complete his evidence and he agreed to come back and he is here today to complete his evidence.

10 He is represented by Advocate Mpofo who wishes to address you briefly Chair.

**CHAIRPERSON:** Yes okay.

**ADV MPOFU:** Chair I am going to be a few minutes.

**CHAIRPERSON:** Yes.

**ADV MPOFU:** I have a three page document with...

**CHAIRPERSON:** Yes.

**ADV MPOFU:** I beg your leave to hand up. I have given a copy to Mr Pretorius.

**CHAIRPERSON:** Okay. Yes.

20 **ADV MPOFU:** Chair this is really just to put a few matters in perspective particularly because the – the coverage of what happened last time was a bit worrying so...

**CHAIRPERSON:** Oh.

**ADV MPOFU:** Yes.

**CHAIRPERSON:** Okay.

**ADV MPOFU:** But...

**CHAIRPERSON:** I cannot remember what it was.

**ADV MPOFU:** Yes, no and it is the usual – we do not blame the media we – some of these things maybe technical.

**CHAIRPERSON:** Ja.

**ADV MPOFU:** But Chair what we want to put in perspective is simply this that – of what happened the last time we were here.

10 **CHAIRPERSON:** Hm.

**ADV MPOFU:** Which is that the – we had moved as the Chair knows a postponement application premised principally on two grounds. One was the right to silence and the other one was the right to – for the privilege against self-incrimination.

Now we say that during the course of the legal argument the am - interactions with the Chair it became clear and was considered on behalf of Mr Mokhesi that the right to remain silent was not applicable in the present  
20 circumstances.

Do you remember the Chair pointed out for example that he had already done two – two statements?

**CHAIRPERSON:** Yes.

**ADV MPOFU:** And Mr Pretorius did not press the right to silent issue. And then it was also considered as we read it

on behalf of the commission that his right to object to specific questions on the grounds of the protection against self-incrimination remained intact and was exercisable.

Now we – in the circumstances – in fact we did not persist with the postponement application.

**CHAIRPERSON:** Yes.

**ADV MPOFU:** Because it was agreed that there would be those parameters and we say that and this is where maybe the misunderstanding came because the Chair  
10 nevertheless found it necessary to formally dismiss the postponement application and to state the reasons for that ruling would be for – this is number 3. And the reasons for that ruling would be formalised upon request and we say in our view that ruling was unnecessary although it was not inappropriate because obviously for formalities sake something had to happen there.

And – but the order – the order – I do not know if it is – if the commission has the same transcript as we have but effectively....

20 **CHAIRPERSON:** I have not looked at...

**ADV MPOFU:** You have not looked at it – ja.

**CHAIRPERSON:** Any transcripts ja.

**ADV MPOFU:** I will just read the – the relevant portion is page 49 Chair where – and this is where I wanted to address the Chair. Because the Chair basically gave three

orders; let me put it that way. And I am reading now it says:

1. “Chairperson thank you Mr Mpofu”

And then it says:

“The application for postponement for the hearing of Mr Mokhesi’s evidence is dismissed which is not [00:05:13].”

So that is number 1.

10 a. “Reasons can be given in due course if they are requested.”

And I want to say on the record that there will – we will not request any reasons because the reasons would be just one sentence that there was no longer an application for a postponement. But here the important part.

20 b. “This is what the Chair said. Mr Mokhesi will need to take the witness stand but he will be able to exercise his right with regard to specific questions not to incriminate himself. His right to refuse to answer certain questions. Okay thank you.”

And that is really is – was then the outstanding matter. Now in our view – well as Mr Pretorius has just indicated he then went on and then he needed another two hours or

so and the Chair gave an extra hour. I am glad to commit Mr Pretorius that today he has promised me that he will not go beyond one hour otherwise he will – I will object on that basis alone.

**CHAIRPERSON:** Well if he – if he goes beyond one hour he will blame questions from the Chair.

**ADV MPOFU:** Thank you Chair that is why I am selling him out here. Then Chair on a more serious note we wanted to place on record that Mr Mokhesi's – it has come to his  
10 attention that the Hawks have been asking certain questions from people at his workplace and I want to go through them – they are in paragraph 7 of the – of the note.

But our concern is simply that the – the – these questions seem to be largely based on the evidence that he gave here which is one of the things we feared and we are really placing that on record just to reinforce the – our fears about self-incrimination.

But for the rest Chair we – we are really here for  
20 basically to police Mr Pretorius. If he asks any questions that goes beyond the – the agreed parameters but which we do not expect.

**CHAIRPERSON:** Yes.

**ADV MPOFU:** Then we will object otherwise it should go quite quickly Chair.

**CHAIRPERSON:** Well I think Mr Mpofu last time I think I placed on record and if I did not I would do so now.

**ADV MPOFU:** Yes.

**CHAIRPERSON:** That I – my impression was that there was a lot of cooperation from both your side, Mr Mokhesi's side and...

**ADV MPOFU:** Thank you Chair.

**CHAIRPERSON:** To try and answer as many questions as possible. I think we made a lot progress.

10 **ADV MPOFU:** We did.

**CHAIRPERSON:** If I recall correctly and I may be wrong there was only one question that he had difficulty with.

**ADV MPOFU:** Yes.

**CHAIRPERSON:** So there was a lot of cooperation.

**ADV MPOFU:** Thanks Chair.

**CHAIRPERSON:** And – and I think well that needs to be said.

**ADV MPOFU:** Thank you Chair.

**CHAIRPERSON:** Ja.

20 **ADV MPOFU:** I appreciate that.

**CHAIRPERSON:** Yes.

**ADV MPOFU:** Then Chair just again this is completely unnecessary but just for the record one of the issues I was going to address was we had received a Rule 3.3 Notice in respect of the evidence of a Mr Koloi who was supposedly



going to implicate Mr Mokhesi. Mr Pretorius has now assured me that that gentleman is no longer going to be called.

**CHAIRPERSON:** Okay.

**ADV MPOFU:** That issue I do not need to address that issue.

**CHAIRPERSON:** Okay no that is fine.

**ADV MPOFU:** Thank you Chair.

**CHAIRPERSON:** That is fine.

10 **ADV MPOFU:** Thank you very much Chair.

**CHAIRPERSON:** Thank you Mr Mpofu.

**ADV PRETORIUS SC:** Thank you Chair there is not much that I should add save to say and to make it clear that whilst a witness has protection in relation to self-incriminating questions there is nothing in the law or regulations either statutory or common law that prevents the Law Enforcement Agencies of investigating in relation to other persons the answers given. And that evidence may be used against other persons.

20 **CHAIRPERSON:** Hm. Alright thank you. I think we must do the oath again or affirmation.

**REGISTRAR:** Please state your full names for the record.

**MR MOKHESI:** Nthimotse Mokhesi.

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

**MR MOKHESI:** No.

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

**MR MOKHESI:** Yes I do.

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

**MR MOKHESI:** So help me God.

10 **ADV PRETORIUS SC:** Good morning again Mr Mokhesi.

**MR MOKHESI:** Moring Mr Pretorius.

**ADV PRETORIUS SC:** Would you please look at Bundle FS8. And if you would go to page 180 please. You will recall.

**MR MOKHESI:** 180?

**ADV PRETORIUS SC:** 180.

**MR MOKHESI:** 180.

**ADV PRETORIUS SC:** Remember the black numbers on the left hand side please.

20 **CHAIRPERSON:** I am still waiting for mine Mr Pretorius they had put here another one. Thank you. I have got it.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** We concluded your evidence on the last occasion in relation to the Asbestos Project Mr Mokhesi by referring to the letter on the previous page

addressed by yourself dated 11 August 2014 to Mr Sodi the CEO of Blackhead Consulting Pty Limited.

**MR MOKHESI:** Yes. Yes.

**ADV PRETORIUS SC:** And if you look at the subject line your letter says to him that this letter concerns the appointment of Blackhead Consulting Pty Limited for the Asbestos Eradication Program in the Free State Province.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** You then referred to that letter in  
10 your reply and that reply appears – I am sorry that is your letter to him. The reply comes from Mr Sodi CEO Blackhead Consulting and that appears at page 180.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** That is a letter addressed by Mr Sodi to yourself Department of Human Settlements Free State. It is dated the following day 12 August 2014.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** It is on the letterhead of Blackhead Consulting and Diamond Hill Trading 71.

20 **MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And the subject line is Appointment of Blackhead Consulting Pty Limited JV for the Asbestos Eradication Program in the Free State Province. And the first paragraph reads:

“We acknowledge receipt of your fax dated

11 August 2014 in which you request our written response regarding the appointment of Blackhead Consulting Pty for the Asbestos Eradication Program in your Province.”

You will notice that Mr Sodi pertinently refers to your letter of 11 August 2014 which deals with the appointment of Blackhead Consulting Pty Limited we can read in. Correct?

**MR MOKHESI:** Yes.

10 **ADV PRETORIUS SC:** He then says to you:

“We would like to confirm the following that Blackhead Consulting Pty Limited JV is willing and committed to perform the required work for the Department of Human Settlements in the Free State.

2. That the participation of Blackhead Consulting Pty Limited JV shall not negatively impact on its performance towards the Gauteng Provincial  
20 Government.”

We know of course the JV had nothing to do with the Gauteng Provincial Government but I just wanted to point out that this appears to be the first mention in the string of correspondence that we have been dealing with of the Joint Venture. Do you see that?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The identity of the Joint Venture inserts itself into the string of correspondence regarding the appointment ultimately of the JV at this stage for the first time. Before this it has been Blackhead only after this it is the JV, correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And as recently as the previous day the 11 August 2014 you were speaking of Blackhead  
10 Consulting Pty Limited.

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** Did you notice the change?

**MR MOKHESI:** Well I – I did not. When I look at I also have indeed looked at the correspondence throughout and just to try and find out why it did not change – why all of a sudden you know particularly from this particular did – why it changed. I then noticed ...

**CHAIRPERSON:** Remember to look this side.

**MR MOKHESI:** Oh sorry, sorry.

20 **CHAIRPERSON:** Mr Mokhesi.

**MR MOKHESI:** Sorry Chair my apologies.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** I do not...

**CHAIRPERSON:** Just start your answer afresh.

**MR MOKHESI:** Okay.

**CHAIRPERSON:** Please.

**MR MOKHESI:** I am saying as Mr Pretorius has indicated all the letters and the correspondence to different people and so on has always been Blackhead Consulting Pty Limited. Not at any stage has there been mention of AE. So I went back and try and find out how did it come about. Now up around about that particular time whether it was the ten – there is a document which has been signed between the parties which I was not part of which has been  
10 signed around that particular time between Mr Mpambani and the fact that and Mr Blackhead and Diamond Hill in their respective capacity around the issues of JV.

But then it – and if you notice that subsequent to that then came this issue of JV – JV and so on. But suffice to say on – on my side I had somehow assumed that Diamond Hill must have been part of the Gauteng Project which turns out that – that was not the case at a later stage.

**ADV PRETORIUS SC:** Well it seems that the letter in its  
20 detail and even the letterhead was not properly had regard to because I think you fairly conceded elsewhere in your statement that things might have been different had you noticed the intervention of the Joint Venture at this stage.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** But I do not want to go there right

now. Just to say that had those responsible and it is not necessary at the moment to point fingers at any particular person but to the Department of Human Settlements rather and its Procurement Process.

Had the introduction of the partner 50% partner being noticed the question might have been asked well why are you introducing partner to get 50% of the payments that are going to be made by the Province and is this not inflating the price unnecessarily? It seems to me that  
10 enquiry was not made.

**MR MOKHESI:** No it was not. No.

**ADV PRETORIUS SC:** And had it been made it would have been discovered that let alone Blackhead's performance Diamond Hill Trading were doing nothing of note to warrant the payment of R125 million. That enquiry was not made.

**MR MOKHESI:** Yes I think also my earlier statement Mr Pretorius where I had indicated you know there was fundamental issues that was addressed of getting documents because it was only through that process ...

20 **CHAIRPERSON:** Please raise your voice Mr Mokhesi.

**MR MOKHESI:** Sorry. I am saying there is a fundamental issues that never happened. I think earlier on I indicated that there were three issues that could have assisted here.

The first and the most fundamental one despite the fact that the – you know Treasury Regulations does not

require of that but there is a underlying particularly on the Risk Management to say if the procurement or the Supply Chain had taken the trouble of getting documents a lot of issues could have been picked up including what Mr Pretorius is raising right now.

So – because that did not happen and those issues were not picked up so this is what I am trying to indicate.

**CHAIRPERSON:** But would you not accept that quite apart from any obligation that officials dealing with Supply Chain  
10 Management in the Department may have had to apply their minds to that issue that you as the Head of the Department had an obligation to apply your mind to such an issue and to satisfy yourself that what was being done was in line with the law? Would you not accept that as the HOD you had that obligation as well?

**MR MOKHESI:** Ja Chair how far – maybe I should have gone further. You know because as I have indicated earlier you know the Supply Chain practitioners of government are trained. They attend workshops on almost on a monthly  
20 basis. The practice knows that come from Treasury goes to them. They advise in our management meeting about the new issues and what is happening. Now- now and here I am indicating about an individual who also has experience who has worked in that environment over time.

**CHAIRPERSON:** Hm.



**MR MOKHESI:** Now – and one tends to you know to trust because I know this individual. I have known him for quite some time even when the – when he started. So one tends sometimes to trust. You know as I have indicated you sometimes pick up these particular issues when there is a problem already like we are facing right now. So I accept perhaps maybe I should have done more but it was a level of trust that I had had on the individual.

**CHAIRPERSON:** Hm. Okay Mr Pretorius.

10 **ADV PRETORIUS SC:** Mr Mokhesi arising out of that question and answer it may be apposite to deal with the issue now rather than later as I intended to do and that is the question of accountability.

We have heard evidence in this Asbestos matter and in the housing matter and in other matters too and the commission is restricted in its capacity to investigate matters such as this which are voluminous. What has become clear however is that the question of accountability comes to the fore again and again and again?

20 The senior officials lay blame on the junior officials. The junior officials say we were following orders and ultimately nobody is on the evidence accountable for what happened.

Surely there must be a point at which someone says, I am accountable and I am responsible and I must

take the consequences. What do you say to that?

**MR MOKHESI:** Ja.

**ADV PRETORIUS SC:** It is a general comment I express.

**MR MOKHESI:** Yes. You know the fact that I am here I am taking accountability and you know and indeed there are consequences for me as we speak right now. I am not – I am not abdicating on my accountability.

I might not have been responsible but I am still accountable because those officials who are below me report – report – ag sorry, sorry – report to me. So in terms of – of accountability I am not abdicating from that Chair if I may put that on record.

I am taking accountability for what has happened and also looking at hindsight in terms of what I should have done you know and so on and what lessons can I – can I take from there. You know this particular issue is happening right at the end of my career. You know it is not good for me.

**CHAIRPERSON:** Ja you see that is quite important. I hope that before the end of the work of this commission I am going to see more and more leaders who whether it is in public service or political leaders who are going to say, I have been listening to the evidence – I have been watching and listening to the evidence being led in the commission on a number of things.

I have taken trouble to look at this and that and that. I think that – and I have done introspection on myself because I was – I had a role to play. I was in charge. I was part of the collective that was in charge and I am here to say, I take responsibility; we fell short; I fell short. Others might not want to take responsibility but I am taking responsibility and I am saying we should have done this. We should have done this.

We should have done that and we did not do it and  
10 we had no – we have no good reason why we did not do it.  
We take full responsibility; we are taking the lessons going forward we want to make sure this thing does not happen again. So I am hoping that I will – I will hear some people within our country who will be able to say, a lot of things went wrong and who will stop pushing blame to other people or at least if they do they will be able to say I am also to blame in regard to this; in regard to that; in regard to that and I am able to say that in front of the nation but because I am able to do that I am in a better position to  
20 contribute to a solution to say, what needs to be done in order for this not to happen again?

Because if people just deny and do not take responsibility you cannot trust them to make a positive contribution to what the solution should be because they deny that there is a problem. Or they deny that they have a

role to play in the problem.

**MR MOKHESI:** Ja Chair I have certainly made an introspection as well myself.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** You know there is a level of accountability in this whole thing.

**CHAIRPERSON:** Hm.

**MR MOKHESI:** Where I said I could have done – there are certain things that I could have done and I did not do.

10 **CHAIRPERSON:** Yes.

**MR MOKHESI:** That I accept.

**CHAIRPERSON:** Yes. Yes. Yes.

**MR MOKHESI:** You know even in an accident you know – you know they say both of you – there is a level of responsibility for that particular accident. You might – you might say that I was right but you probably if you have done something else you could have avoided. So I am not completely saying and standing aside and saying no, no, no it is not me it is somebody else.

20 **CHAIRPERSON:** Yes.

**MR MOKHESI:** But I am stating the facts as they are in terms of what happened.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** And I have never at any point in time denied that that which was happening was irregular. I

have not done – I have not denied or tried to defend it.

**CHAIRPERSON:** Hm. Okay no thank you.

**ADV PRETORIUS SC:** Just a few more pieces of correspondence Mr Mokhesi. Over the page at page 181 of FS8 is a letter from Mr Thabane Zulu. We know that he was the Director General of the National Department of Human Settlements addressed to yourself. Do you see that?

**MR MOKHESI:** Yes.

10 **ADV PRETORIUS SC:** This deals with the appointment of a professional resource team to a departmental panel.

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** So what Mr Zulu is thinking about we know that he has to deal with the funding issue in due course. But what he is under the impression is happening is that there is an appointment to a panel for a database which is talked about later. And he is also speaking about Blackhead, not the Joint Venture.

20 So he is somehow being informed or drawn conclusions, at least two of which are quite incorrect. We know his participation later is quite important. Do you have any comment?

**MR MOKHESI:** On the letter of Mr Zulu to myself?

**CHAIRPERSON:** Yes. He writes to you and he says on the 13<sup>th</sup> of August. That is a day after you told the Joint Venture

is the party responsible. And the fact that the Joint Venture is being appointed itself, not as a part of a panel but is being appointed to do the work. Do you see that?

**MR MOKHESI:** Can you read me a specific paragraph, Mr Pretorius.

**ADV PRETORIUS SC:** Well, just look at the heading.

**MR MOKHESI:** The heading? Oh, okay. Appointment of ...[intervenes]

**ADV PRETORIUS SC:** Appointment of provincial  
10 ...[intervenes]

**MR MOKHESI:** Okay got it.

**ADV PRETORIUS SC:** ...professional resource team to a departmental panel.

**MR MOKHESI:** Oh, okay.

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** So that is what you want me to comment on?

**ADV PRETORIUS SC:** Yes. Mr Zulu is under the impression that what he is dealing with here and what he will  
20 have to deal with later on when he transfers funds is the appointment to a departmental panel. You will recall earlier correspondence.

**MR MOKHESI:** Oh, okay.

**ADV PRETORIUS SC:** Not a single appointment of ...[intervenes]

**MR MOKHESI:** Alright.

**ADV PRETORIUS SC:** ...a Joint Venture or even Blackhead.

**MR MOKHESI:** Ja. I think what became clearer later is that you cannot appoint on a panel. There must have been an existing contract which was not there.

**ADV PRETORIUS SC:** Yes, I think Mr Zulu himself conceded that.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** But was it not important to correct  
10 Mr Zulu to say, firstly: Look, we are appointing or... yes, we  
are going to appoint a Joint Venture, firstly, as the sole  
appointee and we are not dealing with the panel. Was it not  
important to clarify it for him?

**MR MOKHESI:** Well, Mr Pretorius again, I do not want to be  
seen as trying to... you know, I think the Chair has  
articulated this issue of taking accountability. Yes, I agree.  
Okay, let me put it that way to say yes, it was important.

**ADV PRETORIUS SC:** Right. And then Mr Mokhesi, on the  
11<sup>th</sup> of September 2014, you addressed a letter to the Free  
20 State Provincial Treasury which appears at FS8-185.

**MR MOKHESI:** 185?

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Firstly, now suddenly you are talking  
of the JV. Do you see that?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** But what you are also saying here is, you are talking about the removal of asbestos or the eradication of asbestos. So what you are saying now to your Provincial Treasury who must sign the checks is that:

“We are appointing a Joint Venture to identify and remove asbestos.”

Do you see that?

**MR MOKHESI:** Yes.

10 **ADV PRETORIUS SC:** Now that also is not correct. They were not being appointed to remove and they were being appointed to remove. But we know the factors that they did not remove, nor were they asked to remove.

**MR MOKHESI:** Well, they would have been appointed to... I think there were two phases for that. Phase 1 would have been the audit and the other phase would have been the removal. The removal did not happen as we know.

**CHAIRPERSON:** Ja, the correspondence and the letter of appointment, I think, as well as the agreement may be clear  
20 that there were two, I think, tasks. One of which was the actual removal of asbestos.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** But of course, not only did they not remove asbestos, they were not qualified to remove it but that is separate from what they were appointed to do.



**MR MOKHESI:** Yes.

**CHAIRPERSON:** They were appointed to do both.

**MR MOKHESI:** Ja.

**CHAIRPERSON:** Ja.

**MR MOKHESI:** Chair, this particular letter, why it went to Treasury, right? Because in... normally, if you are uncertain about a particular thing, that is what we normally do. I do not have to ask Treasury but sometimes you do so just to get certain assurance.

10        Now I think perhaps this was a copy. There might have been a copy. There might have been another letter which... where the head of Treasury.

I think he wrote on... he wrote notes on the same letter and returned it to me. I think the Commission has it that letter where that simply... where he simply said: You are allowed but ensure that the processes are followed.

20        And that basically is what it was. And which letter then I gave to supply chain to indicate that. You know, my idea of writing... the idea of writing to Treasury actually came from me.

To say: Okay, let us source... let us hear what Treasury has to say about this particular thing. And that was the only response. Ensure that the processes are followed. I did not have to do that but actually it was necessary for me to do that which is the letter that I gave with those notes to

...[intervenes]

**CHAIRPERSON**: Supply chain.

**MR MOKHESI**: ...supply Chain.

**ADV PRETORIUS SC**: Yes, the letter that ...[intervenes]

**MR MOKHESI**: It is the same letter, I think.

**ADV PRETORIUS SC**: I think you may be referring to page 184. Just page back one page. You will see, it is the same letter but it has a handwritten note apparently from Treasury.

**MR MOKHESI**: Yes.

10 **ADV PRETORIUS SC**: Where it says:

“The accounting officer has the power to approve such an arrangement, provided the supply chain management processes has been duly followed and legislation has been complied with.”

**MR MOKHESI**: Oh, is the same letter?

**ADV PRETORIUS SC**: So apart from examining the situation, Treasury just knocked the ball back into your quart.

20 **MR MOKHESI**: Well, once again. And you know, Treasury has got a unit that is... I will call that unit, is a Consulting Unit per se, to advise all the departments about various other issues. And Supply Chain practitioners, throughout the province from all the departments, from time-to-time, they consult with... and that is what I expected. That there will be a further consultation to do exactly that.

**ADV PRETORIUS SC:** To be fair to you Mr Mokhesi. You raise the issues, you ask for advice and you get a scribbled note in return. That is not good enough, surely, for Treasury who is in a position to advice and should know not to, at least, enter the... or some advice at least.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** All they say to you is: We can do it. Just make sure you follow the law. I mean ...[intervenes]

**MR MOKHESI:** Documents were sent ...[intervenes]

10 **ADV PRETORIUS SC:** ...you asked them...[intervenes]

**MR MOKHESI:** Documents were sent ...[intervenes]

**ADV PRETORIUS SC:** ...what is the law?

**MR MOKHESI:** Yes, and documents were sent to them as well.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** I would have thought that after you read that note from them which says in effect that you can do what you were proposing to do provided, that is what they say, provided that the accounting officer has satisfied  
20 himself or herself that the SEM processes were duly followed and they comply with legislation.

I would have thought that with that kind of warning, to say, just remember, you must be satisfied as the accounting officer.

That you would have said to your Supply Chain

Management team: You see this note from Treasury. You must give me a memo that specifies exactly what the law says we should do and you must tell me how we have complied.

Do you think I am expecting too much from you

**MR MOKHESI**: Not really, Chairperson.

**CHAIRPERSON**: H'm.

**MR MOKHESI**: When this response came, also taking into consideration that I had at all material times had a  
10 discussion with the head of Supply Chain.

**CHAIRPERSON**: Ja.

**MR MOKHESI**: Also with this particular letter. As you can see.

**CHAIRPERSON**: Yes.

**MR MOKHESI**: The letter was offered by him after I indicated... Well, I know we are not supposed to consult Treasury. You have to do it. But let us, you know, just for completeness, let us hear what they say around this particular... same whatever documents.

20 All the documents that are there and so on. Let them... and this is what we received as a response. And they simply said: Okay, this is their response. Just ensure that we, you know, the process is above board.

**CHAIRPERSON**: H'm, h'm.

**MR MOKHESI**: Basically.

**CHAIRPERSON:** Okay.

**MR MOKHESI:** And that is basically what...

**CHAIRPERSON:** H'm. Mr Pretorius.

**ADV PRETORIUS SC:** On page 188 of FS8 Mr Mokhesi is the so-called appointment letter dated 1 October 2014. It is addressed from... or it is addressed by you to the Chief Executive Officer, Blackhead Consulting (Pty) Ltd JV. Do you see that?

**MR MOKHESI:** Yes, yes.

10 **ADV PRETORIUS SC:** The second paragraph reads:

“The department wishes to advise that your company has been exclusively appointed for the audit and the assessment of asbestos handling of hazardous material, removal and disposal of asbestos contaminated rubble and...”

I am not sure what those next two words are.

“...with SABS approved materials in the Free State Province.”

20 Two pointed arise at this stage. You appoint the JV, the Joint Venture and not Blackhead Consulting (Pty) Ltd. And the second is the appointment includes the removal and disposal of asbestos contaminated rubble.

**MR MOKHESI:** Yes, that is... yes.

**ADV PRETORIUS SC:** May I just suggest that the reason why the JV was only introduced late in the day, expressly

your letters referred to Blackhead Consulting (Pty) Limited and expressly incorporate in later correspondence the JV is because have the JV been introduced upfront, there would be no question of a transfer of a contract from Gauteng to the Free State.

**MR MOKHESI:** I agree.

**ADV PRETORIUS SC:** Do you agree?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The Service Level Agreement which  
10 we have dealt with briefly in your evidence but also in the evidence of other witnesses, appears at page 189 which makes it clear that the agreement between the department and the Joint Venture as the service provider, that appears in paragraph 1.1, is to carry out a project.

And the project is to find as the appointment of the service provider, that is the Joint Venture, to assess audit, houses roofed using asbestos material, handling and disposal of asbestos sheets to an approved designated disposal site.

20 That concept is repeated in paragraph 2 under Working Relationships. That was the appointment to both identify asbestos and to remove it. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Now we have dealt with correspondence today but when you last appeared before the

Commission Mr Mokhesi, a number of other items of correspondence were dealt with, including correspondence involving Ms Diedericks from the Gauteng Department of Human Settlements. Do you recall that?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** I just want to summarise, if I may, the confusion or the deliberate concealment of facts and how they played out in this correspondence. The first point is that in correspondence that you have referred to in your last  
10 appearance, you sought the extension of the National Annual Contract and Mr Zulu cooperated. That was in correspondence to National Department.

**MR MOKHESI:** That is correct.

**ADV PRETORIUS SC:** Later on, you sought to extend to Gauteng contract.

**MR MOKHESI:** Correct, yes.

**ADV PRETORIUS SC:** Ms Diedericks sought to extent the panel, not an individual appointment. Do you recall that?

**MR MOKHESI:** Ja, I seem to recall that. Yes.

20 **ADV PRETORIUS SC:** Ms Diedericks and Mr Zulu, at least up to a point, yourself talked about Blackhead. The appointment lead to appoints the Joint Venture. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** We have dealt with this.

**MR MOKHESI:** Yes, we have dealt with it.

**ADV PRETORIUS SC:** And we know that this is not a panel appointment. It is the sole appointment of a joint venture. Not Blackhead. Not a panel arrangement. And we also know that it is not in accordance with the Gauteng Terms and Conditions, especially price.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Alright. You to deal with another topic that appears in correspondence. If you go to page 190, please. I just referred you to the Service Level Agreement  
10 entered into between the department on the one hand and the Joint Venture on the other. The SLA refers to removal... well, identification and removal and disposal. We know that.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** I think at some stage you called your legal department to account for not making it clear what the appointment actually should have been forth. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** That appears in the transcript of your interview at Bundle FS6-442 to 443. Your legal  
20 department drafted this. Correct?

**MR MOKHESI:** Yes. Yes.

**CHAIRPERSON:** You need some file? I think, if you need some file Mr Mokhesi, they can assist you. I think he wants to look at something.

**ADV PRETORIUS SC:** Alright. If you want to see it



...[intervenes]

**MR MOKHESI:** FS...

**ADV PRETORIUS SC:** You want to see it?

**MR MOKHESI:** Oh, okay. Now if...[intervenes]

**ADV PRETORIUS SC:** I mean ...[intervenes]

**MR MOKHESI:** I thought ...[intervenes]

**ADV PRETORIUS SC:** ...I think you accept that we told your legal department to draft this.

**MR MOKHESI:** Okay.

10 **ADV PRETORIUS SC:** And this is what they gave.

**MR MOKHESI:** Okay, ja.

**CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** Perhaps it should have just restricted the appointment to what they were actually appointed to do and that is to identify the asbestos houses.

**MR MOKHESI:** Yes, okay.

**ADV PRETORIUS SC:** But what is important is, is what follows. At FS8, page 234 appears the contents of the letter that begins at page 232 and I would like to draw your  
20 attention to the transcript of 234.

**MR MOKHESI:** 232 or 234?

**ADV PRETORIUS SC:** Ja, do you have... or perhaps, just go to page 232.

**CHAIRPERSON:** Is that 332?

**ADV PRETORIUS SC:** 232 Chair.

**CHAIRPERSON:** 232?

**ADV PRETORIUS SC:** Yes of FS8.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Now we know Mr Mokhesi that Mr Zulu played a role in the finalisation of the contractual arrangements and in particular on the making available of funds to allow it to happen. We know that. That evidence has been given.

**MR MOKHESI:** Yes.

10 **ADV PRETORIUS SC:** By yourself, especially.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** In order for the funds to be made available, they had to be transferred from the budget from another province to the Free State.

**MR MOKHESI:** H'm. Not... no, not in that manner.

**ADV PRETORIUS SC:** How did it have to happen?

**MR MOKHESI:** Every year, right, after a couple of months there is an opportunity or there is... you are given an opportunity to revise your business plan particularly  
20 specific... in respect of specific ...[intervenes]

**CHAIRPERSON:** Face right.

**MR MOKHESI:** Sorry.

**CHAIRPERSON:** Yes, face... [laughing]

**MR MOKHESI:** Specifically, in respect of projects because we... you run to pay multitude of projects at the same time.

And then you always have this specific or projects that will not make it in terms of the expenditure throughout the year.

So normally, you are allowed to revise your business plan and that is how it happened. It is not about... it is about the revision of the business plan, reprioritising and indicating what is really and what can we perform at a particular point in time.

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

**MR MOKHESI:** So ordinarily, the DG will then approve that  
10 reprioritisation.

**ADV PRETORIUS SC:** But where would the money come from?

**MR MOKHESI:** Within the very same budget that... you can have sometime the budget. For example, which is not performing for a variety of reasons. It could be for a variety of reasons that the project is not performing.

Procurement issues and sometimes that particular project is stopped because we operate within communities and there might be problems.

20 Sometimes this particular problem might also be relating to just in capacity of some of the contractors to simply perform.

**CHAIRPERSON:** Or it might be temporarily stopped because of legal challenges?

**MR MOKHESI:** It might be... yes, correct.

**CHAIRPERSON:** H'm.

**MR MOKHESI:** You know, it could be a variety of factors.

**CHAIRPERSON:** H'm.

**MR MOKHESI:** So there is always, particularly within the sector, there is also that particular problem where we have every... where you have to revisited the business plan.

**ADV PRETORIUS SC:** So you would have a business plan which would involve the allocation of funds to various projects. A revised business plan would allow the movement  
10 of funds allocating to ...[intervenes]

**MR MOKHESI:** Allocating to be ...[intervenes]

**ADV PRETORIUS SC:** ...from one project to another.

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** Or from one province to another province.

**MR MOKHESI:** To another. Correct. That is also an option.

**ADV PRETORIUS SC:** Alright. So let us not spend too much time on that issue. We know, to put it at its lowest, that in order for money to be made available for the  
20 Asbestos Project, it would have to be taken from somewhere else, another project or another province.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And in order for that to happen, the Director General would have to see a revised business plan.

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And he would have to persuaded that it was in order to do so. Correct?

**MR MOKHESI:** He will have to approve it.

**ADV PRETORIUS SC:** And this letter at 232 of FS8, is the motivation addressed to Mr Zulu of the National Department by yourself on the 27<sup>th</sup> of November 2014.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Now that is, obviously, after the appointment but that is another issue. The appointment took  
10 place on the 1<sup>st</sup> of October. This motivation for a revised business plan was the 27<sup>th</sup> of November. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Now what Mr Zulu was told. Remember, this is a letter intended to persuade Mr Zulu to make funds available, either from another project or from another province. We understand that. Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** On page 234, you tell Mr Zulu:

“The object of the project is two-fold.

- 20
- Quantify audit and assess the number of houses roofed with asbestos sheets.
  - Remove and dispose asbestos to an approved and registered disposal site.”

That is what you tell him, correct?

**MR MOKHESI:** Correct. Yes.

**ADV PRETORIUS SC:** You go on to say:

“The rate will be to conduct door-to-door assessment at R 850,00 per house excluding VAT.”

The letter continues:

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

What follows is important. It says:

“The above unit rate includes the following.”

10 And then various items are listed but over the page, the last three bullets read:

- “- Transport of the asbestos to a registered disposal site.
- Disposal cost of the asbestos.
- All relevant paperwork pertaining to health and safety regulations.”

Now this is an inference that can be drawn in submissions but that list of tasks looks remarkable like what the Gauteng Project put up but I am not going to go down  
20 that route for the moment.

All I want to point out to you is that Mr Zulu was told when he had to consider making funds available that the R 850,00 per house would include the transport of asbestos to a registered disposal site and the disposal cost of the asbestos. Correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Which is wrong. It is incorrect. It did not.

**MR MOKHESI:** Yes, what is... I agree. What is missing here in this particular... in this letter. Because it is actually impossible to do that at R 850,00 per unit.

**CHAIRPERSON:** It is impossible...?

**MR MOKHESI:** Sorry. It is not possible to do all that at R 850,00 per unit.

10 **CHAIRPERSON:** H'm.

**MR MOKHESI:** So what should have, the letter should have included. It should have included, which is also part that they care of the... because if the removal was also replaced(?), the 32, I think which was mentioned in the proposal, the 32 which was the Phase 2 part of it. Because you... at R 850,00 per unit, it is just not possible.

It actually was meant to refer to the Phase 1 of actually taking stock of what is there, what... you know, that was basically. I consider what should have been included, there  
20 should have been a...

**CHAIRPERSON:** Mr Mokhesi, that is very strange to me. To say now that the price that you specified as the department in the letter of appointment for a job that constitutes of two tasks to have done ...[intervenes]

**MR MOKHESI:** Yes.

**CHAIRPERSON:** ...was actually not the correct price. And I guess... I mean, there are a number of... I think there are a number of letters, I think, that the price would also have been in the Service Level Agreement, I would imagine. Or not? I have not checked now.

**MR MOKHESI:** It will be on the ITW.

**CHAIRPERSON:** Yes, but in the ...[intervenes]

**MR MOKHESI:** Instruction to performing in the service ...[intervenes]

10 **CHAIRPERSON:** In the service but ...[intervenes]

**MR MOKHESI:** ...that gives effect for the work to be done.

**CHAIRPERSON:** Okay but how do you say in correspondence as a department, the price for doing A and B is R 850,00 per house, when actually R 850,00 per house is the price for A only? How does that happen?

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

**CHAIRPERSON:** I mean, if you can do that, it seems to me you are capable of actually saying the service provider for one of the two tasks. In other words, if the first task for  
20 audit, identifying and assessing was 850 per house and the second task of removal, let us assume for argument's sake that it was also 850 per house which means what, 1.7 per house, that is the whole job, okay? So it means ...[intervenes]

**MR MOKHESI:** I did not get that, sir.



**CHAIRPERSON:** Okay, I am saying let us say for argument's sake, you know that the first task that you ...[intervenes]

**MR MOKHESI:** Call it an assessment.

**CHAIRPERSON:** ...you gave to the joint venture was to quantify, audit and assess the number of houses, roof being asbestos sheets.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** That is the first task.

10 **MR MOKHESI:** Yes.

**CHAIRPERSON:** The second one is remove and dispose asbestos to an approved and accredited disposal site. Now what you have just told me is that the price of 850 per house was only for quantifying, auditing and assessing the number of houses roof with asbestos sheets, it was not – it did not include to remove and dispose asbestos to an approved and accredited disposal site, right?

**MR MOKHESI:** Okay.

20 **CHAIRPERSON:** Now I am saying that that is – I find that quite strange because it means that if you can say 850 is the price for both when it is actually price for one, it means you could actually take the price for both – let us say here for argument's sake 1.7 per house and say it is for one of the two tasks. It just seems to be – so it seems to be gross negligence to say the least. You understand what I

mean? How does such a mistake happen and to make it worse, the service provider does not point out that no, no, no, no, no, Mr Department, you have got it wrong, 850 is only for the first task, it does not include the second task. So everybody in terms of paper accepts that 850 per house is for both tasks but you are saying no, actually it was for the first task.

**MR MOKHESI:** Okay, the original proposition or proposal, you find it in that particular manner. In fact, the original  
10 proposal was say – I think it was saying 1.7, if I remember. I am just speaking – 1.7, but was reduced to 850, that involved assessment, call it assessment and so on. In Gauteng we know that it was 650 and that was also the first part of the problem in terms of why this contract was [indistinct – dropping voice] and the second of the proposal indicates the 32 which will involve all these other issues.

Now at 32, I think 32 000 per unit which will also involve – because if you remove you also have to replace so it would not have been possible for 850. I hear what  
20 you are saying, Chair, in terms of material omission from what the proposal was originally. However, this would have been – if, for example, everything was – there was no problem in terms of the appointment and so on and will have continued into the second phase, this would have been corrected.

**CHAIRPERSON:** Mr Pretorius?

**ADV PRETORIUS SC:** Let us move onto another topic if we may, Mr Mokhesi. We know that in this particular series of transactions the contract with the joint venture for the identification of houses and perhaps certain other word to, I will come to that in a moment, was in the region of R250 million.

**CHAIRPERSON:** Just raise your voice, Mr Pretorius, please?

10 **ADV PRETORIUS SC:** We know that the agreement between the department and the joint venture agreed to pay the joint venture an amount of over R250 million, correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** We know that there was subcontract and an appointment of Blackhead for an amount in the region of R54 million to do most if not all the work. We know that, correct?

**MR MOKHESI:** Originally we – okay, I know of it now.

20 **ADV PRETORIUS SC:** Yes, you know of it now, so I am not saying you knew of it then. In fact, that is precisely the point I want to raise and perhaps you can assist the Commission in this regard with your experience and knowledge. We know that there was a further subcontract for most if not all of the work to be done for R21 million to

the ORI Group. We know that, correct?

**MR MOKHESI:** My response will be the same as what I have said to [inaudible – speaking simultaneously]

**ADV PRETORIUS SC:** Yes, alright, we have that.

**MR MOKHESI:** Yes, yes.

**ADV PRETORIUS SC:** It can hardly be alleged therefore that there was value for money in the payment of R250 million, would you accept that?

**MR MOKHESI:** Mr Pretorius, can I – okay, sorry, Chair.  
10 Can we – or I do not know whether should I say agree, I suppose and also, you know, taking the - about what has happened around this issue of value for money, you know, and I earlier indicated that there was this court decisions that says there was no overpayment. I thought the Commission had that, you know, but I was just informed that they do not but we would make that available.

**ADV PRETORIUS SC:** We would like to see that, if we could.

**MR MOKHESI:** Ja.

20 **CHAIRPERSON:** What did you say that decision said, I am sorry?

**MR MOKHESI:** A political party took the department to court.

**CHAIRPERSON:** Ja.

**MR MOKHESI:** And they - you know, one of the decisions

or one of the findings that was made was that there was no overpayment, okay. It is in the court judgment but it is not on the merits, let me indicate that. It is not on - in other words, it is not on whether the contract is irregular or not, that is beside the point, I think – ja. And one of – how we said value for money, we relied on what the judge said at that particular – in terms of that. That was that.

The second part was also part of internally, you know, how do we deal with irregular expenditure when it  
10 has occurred, you know, there is a process of a framework in terms of how we deal with that. We also dealt with that. And I am certain the AG will not have agreed in terms of the write-off it – maybe it is because of none of the parties involved there were experts. Maybe it is because of that. I am just saying. But there was a process, that is the second part.

And subsequently, there was also an investigation by the Public Protector who arrived at a different conclusion. I think the Commission and the Public  
20 Protector’s conclusion are the same. We now have an investigation by the SIU. Now all that I am saying because also the SIU will also come up with things(?) to say let us leave in terms of the issues of the value for money, can we then leave it perhaps also either to the SIU ...[intervenes]

**CHAIRPERSON:** No, we cannot.

**MR MOKHESI:** To ...[intervenes]

**CHAIRPERSON:** No, no, no, Mr Mokhesi, we cannot. We have to make our own decisions, we are not going to ...[intervenes]

**MR MOKHESI:** Okay, can I leave that ...[intervenes]

**CHAIRPERSON:** ...to let somebody else make decisions on this.

**MR MOKHESI:** Okay because ...[intervenes]

**CHAIRPERSON:** So even if a judge that said there was  
10 no overpayment, just from that...

**MR MOKHESI:** Yes.

**CHAIRPERSON:** I have not read the judgment, I do not know what the judgment says but it seems to me that he or she might be talking about whether you paid more than you had undertaken to pay which is different from the question that Mr Pretorius is asking, namely, when you have regard to A, B, C, D are you able as HOD at the time to say the department got value for money? So you are going to – what do you mean when you say value for money, you look  
20 at what happened and you say yes, we are able to say we got value for money or you say look, knowing what we know now, we are not able to say we got value for money.

**MR MOKHESI:** It is a tricky question for me because, you know, there is no – what will I say, there is no conclusion because we might – we might at a later stage, the

department might have to write back based on the – either the outcome of the Commission, or whatever, body that has been tasked to investigate this issue for value for money. So we might have to write something back and also pursue.

**CHAIRPERSON:** But that worries me even more, Mr Mokhesi. I take it that one of your obligations, your responsibilities as HOD at the time was to see to it that whatever contracts your department entered into with any service provider was such that the department would get  
10 value for money and that when that service provider had finished doing the work, you had an obligation to apply your mind to the question in regard to this contract, did the department get value for money? And if the answer you get from that is no, the department did not get value for money, you would be worried and you would need to act on that.

**MR MOKHESI:** Chair ...[intervenes]

**CHAIRPERSON:** Now the answer you are giving me suggests to me, and maybe I misread what you are saying,  
20 that you did not do that because if you had done that, you would be ready to deal with the question that Mr Pretorius puts to you. You say I do not know what the SIU will decide, I do not know what this Commission will decide but I have applied my mind to the question as HOD and my answer is A, B, C, D.

**MR MOKHESI:** Chair, at that time, right, this information that Mr Pretorius is talking about that they subcontracting and so on and so on, that information was not there at that particular point in time. The fact that it was written off it is because there was certain work that was done and they came to a conclusion that there was value for money, that that was before the other inquiries like the inquiry right now, that is happening, which attempts to get deeper into the issues.

10           Now obviously when that comes – that is why I mention in this – this independent, which I will say independent outside the department, right, will then be in the position to inform because I am sure the service provider themselves will also want to make a point or a case in terms of whether value for money.

          The outcome of this Commission in terms of that is going to be very important as well because then it is done independently, outcome of the Commission plus the outcome of any independent institution like SIU and I am  
20   sure somewhere you will converge and there will be indications as to why there is either no value for money because I have done that already and what is being done now seems to contradict that conclusion based on the information that was available there.

**CHAIRPERSON:** Mr Pretorius?



**ADV PRETORIUS SC:** Do you wish to take the short adjournment now? I am happy to do that.

**CHAIRPERSON:** We can either take the adjournment or you want some – pursue one or two questions before we do so, I am happy to ...[intervenes]

**ADV PRETORIUS SC:** Well, perhaps we should just tie up this topic.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Mr Mokhesi, we do not know what  
10 the court was told in relation to this contract and its performance. We have asked for the judgment and perhaps we will still get it.

**MR MOKHESI:** I think that the initial investigation that was given to the investigators, not – I will make that available.

**ADV PRETORIUS SC:** Yes but the point we do not know what the court was told and what conclusion it drew in relation to the facts that we now know before us. So I am not sure we can rely on the court as a ...[intervenes]

20 **MR MOKHESI:** I am not ...[intervenes]

**ADV PRETORIUS SC:** ...an informed judge of whether there was value for money.

**MR MOKHESI:** Well, I am not saying that, Mr Pretorius, you should because even that judgment was never appealed against. Okay and so in the absence of anything

to the contrary one is bound to conclude as I have concluded.

**ADV PRETORIUS SC:** No, I am putting the contrary to you, Mr Mokhesi, we do not know what information the court was given in regard to value for money, nor do we know now what it found. As the Chair has pointed out, it is for this instance to make its own findings on the facts before it.

**MR MOKHESI:** Yes.

10 **ADV PRETORIUS SC:** You now know the facts and we now are dealing with hindsight, not what you knew at the time. I am quite willing to approach this matter with the benefit of hindsight for the present purposes.

It appears – and I want to get to another point because the Chair will make up his mind as to whether there was value for money. There is plenty of evidence including the evidence found by the Public Protector that the work was done for approximately R21 million, right? And R250 million was charged for the work and quite  
20 frankly, it is quite obvious that there was no value for money here.

I want to raise another point with you and that is, what happened here, unbeknown on your version and we must accept that for the moment, unbeknown to the department there were two levels of subcontracts

happening, correct? First to Blackhead for R54 million, then to ORI for R21 million, if you do the fieldwork, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** You were not told that.

**MR MOKHESI:** No.

**CHAIRPERSON:** I think you said Blackhead, Mr – I think you meant Master Trade.

**ADV PRETORIUS SC:** Master Trade, I am sorry, Master  
10 Trade. Ja, first to Master Trade and then to ORI, correct?  
You were not told about these subcontracting  
arrangements. With hindsight, how would you regulate  
matters to prevent this sort of thing happening again?

So what we have here and it is not uncommon, according to the investigations of this Commission, is that you get a company that tenders for government work and the subcontracts it at a much lower price and makes a huge profit, simply for intervening as the contracting party. Can this be prevented? Can prejudice to the state be  
20 prevented? Can you help the Chair?

**MR MOKHESI:** In terms of making suggestions?

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** For how ...[intervenes]

**ADV PRETORIUS SC:** You were on the ground, you know, you have experience. Perhaps you can help the Chair.

**MR MOKHESI:** Ja, Chair, sometimes the contractors are also becoming very creative. It is very difficult but ordinarily there would be a – particularly on construction because people do sell work, we know that it does happen, like Mr Pretorius has indicated. In terms of trying to maybe prevent or try to – because we cannot completely - you know, I do not believe there is anything that says you can completely, but we can minimise opportunities for that happening, is to have a contract with the main contractor  
10 about who – how much, you know, in other words putting up the rules to say yes, you can subcontract because – you can subcontract because there will be work that needs to be subcontracted in any contract in any event, you know, setting out the guidelines to say you can only subcontract no more than 20 or 30% of the work, the rest it must be done by yourself as the main contractor and get perhaps a list of the people who will be doing the work and prove that they are the actual people, you know, the actual - you are actual employees, so to speak.

20 So in requesting those particular details perhaps maybe for the future it could assist to prevent, you know, people subcontracting or selling work 100% to others.

**ADV PRETORIUS SC:** Yes, just one point, it seems that from the side of the various departments that give work, we have heard both in this matter and in the housing, matter

are very creative ways of avoiding competitive bidding and it appears that greater control must be exercised and loopholes must be closed. Do you agree?

**MR MOKHESI:** Yes, I do.

**ADV PRETORIUS SC:** Oh, there is just one more brief topic to deal with, Chair. May we take the short adjournment?

**CHAIRPERSON:** Well, before we take the adjournment, I am interested in hearing what you have to say, Mr Mokhesi,  
10 to Mr Pretorius' proposition that on what we know now, the department did not get value for money. He mentioned to you some of the things. You have told me what you thought then, sometime ago. Are you able to say whether, with what you know now, you still stay with your view that the department got value for money or are you saying, with what you know now, you no longer – you think the department did not get value for money?

**MR MOKHESI:** Okay, Chair. On the face of it, without saying how much that value is because it has still got to be  
20 determined, you know, there will be – to say the department per [indistinct] 22.38 did not get full value for money. Without putting an amount and this amount I think will be the outcome of the enquiry at this stage to say this is what we think and then obviously, as I have indicated now, the department based on that evidence will then have

to write back that which is deemed not to have been value for money and try and recover it. I think that will be the normal process going forward.

**CHAIRPERSON:** Is your answer that your view is that the department did get some value but you are not able to say it got full value for the R250 or so million that you paid?

**MR MOKHESI:** Ja, taking also into consideration that we did not pay the full amount particularly when the Public Protector started the investigation. Also, as a way of  
10 managing the risk because, you know, we could not predict what the outcome of the Public Protector would be at that particular time so – and I think the same information that the Public Protector had in her investigation is similar to what the Commission and possibly the Commission did more basically. Now, based on that and with possibly the quantum that I am sure the Commission will be able to determine, you know, whatever remain, what will have to be written back but my answer is possibly the department did not get full value for money in this instance, I am not  
20 able to say how much.

**CHAIRPERSON:** Yes, okay, alright. Let us take the – yes, Mr Mpofu?

**MR MPOFU:** Thank you, Chair, it is just a request more for personal reasons.

**CHAIRPERSON:** Yes.

**MR MPOFU:** Mr Pretorius has indicated to me informally that he needs another ten minutes or so, so I wanted to request if it is at all possible whether we could deal with that and then take the break or...

**CHAIRPERSON:** Yes. Yes, no, we can, we can do that.

**MR MPOFU:** Thank you.

**CHAIRPERSON:** Ja, okay, let us do that.

**MR MPOFU:** Thank you very much.

**CHAIRPERSON:** Ja, maybe before we do that, let me ask  
10 another question that I was going to ask after the tea adjournment. You might not need to go to this page, Mr Mokhesi, but it is page 234, that is one of the pages of the letter that Mr Pretorius referred you to which you addressed to Mr Zulu. You signed it on the 27 November 2014. At page 234 there is the part where you say the objective of your project is twofold and then you specify. You know which one I am talking about?

**MR MOKHESI:** 234?

**CHAIRPERSON:** Ja, you might not need to read, to look  
20 at it, but you can if you want, page 234.

**MR MOKHESI:** Ja, I am on page 234.

**CHAIRPERSON:** Ja, okay, somewhere in the middle of the page you say:

“The objective of the project is twofold.”

Then you specify the two objectives, I am not going to

repeat them. Then later on down the line, you say:

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

I take it that that is the Act and the regulations that also specify the requirements or qualifications of – that need to be met by anybody who wants to remove asbestos, is that correct?

**MR MOKHESI:** Correct.

10 **CHAIRPERSON:** Now Mr Sodi gave evidence here and he conceded that Blackhead and the joint venture did not have the qualifications and were not accredited to remove asbestos. Did you hear that part of his evidence?

**MR MOKHESI:** Yes, I have noted that.

**CHAIRPERSON:** You have noted that.

**MR MOKHESI:** That evidence that he gave.

**CHAIRPERSON:** Yes. Now were you aware of that prior to him giving that evidence or were you not aware?

**MR MOKHESI:** No, I was not aware that they do not  
20 have...

**CHAIRPERSON:** The qualifications.

**MR MOKHESI:** Yes, I assumed basically that they should have because they did work in Gauteng but, as I have indicated earlier, Chairperson, you know the documents, if we were cover the documents of all the Gauteng in terms



of what we – this matter would have picked up as early as that particular time.

**CHAIRPERSON:** Yes, but you see, I am worried because from the fact that you say in this letter all asbestos will be removed and disposed of as laid out in the Occupational Health and Safety Act and the Regulations, gives me the impression that you are aware that there is a special procedure that must be followed as laid out in that Act and I take it that you would also have been aware that not  
10 anybody ...[intervenes]

**MR MOKHESI:** Anybody.

**CHAIRPERSON:** ...could do this job. This job requires somebody to have certain qualifications or to be accredited. You were aware of that, were you not?

**MR MOKHESI:** Ja, ja, yes.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** And this – okay, yes, Chair.

**CHAIRPERSON:** You see, my question therefore is how was it possible that as HOD you could not at least say to  
20 your officials where are the qualifications or where is the accreditation of this entity that they can do this job because that must be quite an important and basic question to ask before you give anybody a job.

**MR MOKHESI:** Let me respond to that.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** It is not the first time that we remove asbestos, it was only – this case is a different – was a different one. We have been particularly with old pre-1994 houses which are dilapidated and so on. Now we have been removing them albeit not on a larger scale and so on, only two people who qualify – to those individual ones who are qualifying for government assistance and are living in those houses.

Now it is not a new thing, the issue of the removal  
10 of asbestos, I do not have to repeat it to the officials, so they know that, as I have indicated. This was not the first time Chairperson we have done that partly in Soutpan even in Mangawu certain houses where you know – and ordinarily what will normally happen in that instances while we appoint a contractor to do that he would have outsourced because that is not maybe the main part of it.

He would have requested somebody because there is quite a few people in the province who are qualified to remove that, to remove the asbestos. He will then do that  
20 before the demolition of a structure so that we have been doing even before then.

**CHAIRPERSON:** But are you saying to me that you were – okay you said earlier on it was the first time you heard that that they did not have, Blackhead did not have accreditation or qualifications. So you were under the

impression that they did have the necessary qualifications or accreditation, is that correct?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** You were under that impression?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** But that is something you had not checked you assumed that they did.

**MR MOKHESI:** Yes, because and in our normal course of work we have always you know somehow as I have indicated removed asbestos and there are procedures. The first one is you must produce the certificate that the person who is going to remove that you know there is a process as to who qualifies and so on the dispose of sites. It is not anywhere you cannot just dispose it for example in any landfill site and so on. So we have been doing that before.

**CHAIRPERSON:** But when you were doing it before did you ask to be satisfied that the person who would do the removal, who would be qualified did you ask for the qualifications to be placed before you to know that okay it can be done.

**MR MOKHESI:** Okay let me put it this way it is not before me but before the officials because it is not the first time. They are there the removal, the removal of asbestos as I have indicated we have been doing it as a matter of course

particularly for the beneficiaries who are qualifying to do that – ag sorry who are qualify for government assistance.

**CHAIRPERSON:** But why is it, why is there nothing that is given to you that says if we give this job to this entity or this person it is in order because in terms of legislation a person who does this job must have the following qualifications or accreditations and this one has got those accreditations or qualifications. And if necessary, here are copies or whatever maybe they do not say that but at least  
10 they say it is there we know it but I would have thought that they would attach to whatever documentation they give to the HOD to satisfy him or her that this person meets the legal requirements to do this job.

Now in this case the officials do not give you anything  
to indicate that you are appointing somebody who meets the legal requirements to do this job. I would have thought that it is quite basic to say if you want me to appoint anybody, I must at least know that they qualify in terms of  
20 the law to do this job because I cannot appoint somebody who might turn out later not to actually have the qualifications.

**MR MOKHESI:** Chair certain things are so basic like you have just said now you know are so basic that I do not even as an accounting officer have to see it because this is

the work that we have been doing. You know in government things are largely standardised right to say if this is what you have to do there is a checklist of the usual.

So and I think I have earlier indicated you know with the span of control of 11 people that reports to me it is actually - and each one of them being's senior managers in their own right and could be actually accounting officers in their own right. They can apply for my job, right and then  
10 they are running their own respective fields, right. So in most of the cases you know it is through engagements and reports and so on. So that is in a checklist basically and...[intervene]

**CHAIRPERSON:** And you expect them to do that.

**MR MOKHESI:** I expect that you know I do not have to even to tell them because it is not even the first time that we are dealing with asbestos.

**CHAIRPERSON:** Well now that we know or let me ask this question. If you knew that Blackhead or this joint venture  
20 did not have the qualifications or the accreditation required to do the removal of asbestos would you still have appointed them to do this job?

**MR MOKHESI:** No.

**CHAIRPERSON:** You would not have appointed them.

**MR MOKHESI:** They do not qualify they will not have – I

think we will probably will be only in the position to pick up this at the second phase because then they will have to produce because now other parties will be involved department of labour for example in this whole process because of the sheer magnitude of the work. And definitely labour would have been involved and you know there would have been checks and balances along the way even before they started, they will have to produce that.

**CHAIRPERSON:** So it seems to me that the joint venture  
10 of Blackhead also made a misrepresentation to the department because in the service level agreement they assured the department that they had the capacity and the experience I think there is qualifications if I am not mistaken to do the job and the job as specified included the removal of asbestos which they were, they had no accreditation to do. Is that right?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** Is that your understanding as well?

**MR MOKHESI:** Yes that is my understanding they were  
20 not accredited to do the job.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Yes now that we know...[intervene]

**CHAIRPERSON:** Yes, and there may be a risk I would imagine but you might have a different view. There might be a risk that if a when you want to do the actual removal

maybe whoever you appoint might say well the first part was not done properly and they need to do it themselves and then there might be duplications of payments or do you think that is not likely to happen.

**MR MOKHESI:** Well that is a risk Chair as you have indicated you know that is a risk, that could have been a risk perhaps when...[intervene]

**CHAIRPERSON:** Ja, I am sorry Mr Pretorius I understood Mr Mpofo's request to be aimed at us finishing with Mr  
10 Mokhesi before we take the adjournment, he said for personal reasons but I understood you to still have another topic or something that you wanted to raise.

**ADV PRETORIUS SC:** Yes, there are two topics Chair and perhaps your guidance on one of them.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Ten minutes is perhaps typical of counsels forecast and I include myself in that very optimistic.

**CHAIRPERSON:** Ja.

20 **ADV PRETORIUS SC:** Okay we still got to deal with the one discreet topic there is a question on arising out of this exchange that I would like to ask. Then there is the Public Protector's findings.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Now the Public Protector's findings

are a matter of record they are there in black and white they are not going to change as of a result of anything that happens here today. But it may be a consideration that if you are going to have regard to those findings it may be fair for Mr Mokhesi to have a chance to comment on them and that is a reason why we have extracted certain findings to enable Mr Mokhesi to comment on them should he so wish.

**CHAIRPERSON:** Yes.

10 **ADV PRETORIUS SC:** He does not have to comment but at least he has the opportunity I am not sure what your preference is Chair?

**CHAIRPERSON:** Yes. So on your assessment if you have got to deal with all of that how much time do you think you might need?

**ADV PRETORIUS SC:** 30 to 40 minutes.

**CHAIRPERSON:** Yes. Mr Mpofu what is your situation?

**ADV MPOFU:** It is okay Chair we can take the break.

**CHAIRPERSON:** It is okay, okay let us take the tea  
20 adjournment it is ten to twelve and then we will resume at five past, ja okay. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Before Mr Pretorius continues Mr Mokhesi I just want to say that do you think it would be unfair to you



to expect that given what you found when you were appointed as HOD to this department relating to the R1 billion housing project or R1.3 or R1.4 billion project about which you testified sometime last week – given when you knew had happened under the watch of your predecessor Mr Mokoena and the losses – financial losses that the department had suffered money that was not accounted for which you testified about tax payers money that seems to have been paid away with no real work being done. Do you  
10 think it would be unfair to expect that your attitude would be that under your watch as Head of that department you would be more stricter in terms of making sure that processes were followed and legislation was followed because you would not want something similar to happen.

**MR MOKHESI:** Is the Chair saying I should have been more stricter?

**CHAIRPERSON:** No, no I am asking – so maybe let me put it this way. It seems to me that there may be room for saying given what you found when you were appointed as  
20 Head of this department and what I am talking about is the financial loss incurred by the department in regard to the R1 billion housing project under Mr Mokoena your predecessor. Given that that is what you found and it was quite – quite you know a big problem I would expect that you would have been more determined to make sure that such losses as far

as possible were avoided under – during your term and that for the – for that reason you would be stricter in making sure that legislation and processes were complied with during your term. So I am putting the question, do you think it is unfair to expect that that is the attitude you should have adopted?

**MR MOKHESI:** Chair I do not think it is unfair for – for – to expect that and you know during that particular time as well also due consideration should be taken that we particularly –  
10 there was a period where we did not – where we you know we – because of – because of the disciplinary process and so on which – in positions that we could not [00:04:14]. Somehow even the controls perhaps were not as they should be.

And as I re - indicated I have done a lot of introspection around this particular issue. And you know I cannot undo what has happened but I can sincerely do something about going forward to say what happened people that I trusted you know particularly those that I work with.  
20 Because my attitude has always been that you know until – unless a person – because if you do not trust individuals that you work with it is also a problem because you have to at the position that you are holding you have to trust individuals and hope because this other individuals or this particular individual was not part of that which was there.

As I have indicated that I have known him before – even before I joined the institutions. I have worked with him elsewhere and I know his capabilities and – and I thought at the time this is the person – this is new blood that I needed in the institution because of the expertise. But it has happened and you know I cannot change it and I feel terrible about that.

**CHAIRPERSON:** Okay. Mr Pretorius.

**ADV PRETORIUS SC:** Thank you. Thank you Chair. Would  
10 you please go to Bundle FS1 Mr Mokhesi at page 59?

**MR MOKHESI:** Page 59.

**ADV PRETORIUS SC:** Yes. Chair this is the second affidavit of Mr Mokhesi. To the best of my recollection it has been admitted as an exhibit but perhaps just in case.

**CHAIRPERSON:** What page is it?

**ADV PRETORIUS SC:** Page 57 – 58 rather of FS1.

**CHAIRPERSON:** Oh that is where it ends or not?

**ADV PRETORIUS SC:** It is Exhibit TT2.2

**CHAIRPERSON:** No he gave me FS12 instead of FS1.

20 **ADV PRETORIUS SC:** Page 60 of FS1 is that your signature Mr Mokhesi?

**MR MOKHESI:** Page 60?

**ADV PRETORIUS SC:** Page 60.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** And this is your second affidavit to

the commission?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** It is Exhibit TT2.2 Chair. If you go to page 59 paragraph 7.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** You say in paragraph 7.1:

10 “During the time of the Asbestos Audit I became acquainted with Mr Edwin Sodi. We became friends. As a result of my appreciation of Sodi’s business skills and my impression that he enjoyed wealth I resolved to approach Sodi to join me in the investment in a property transaction referring to the acquisition of the property referred to in paragraph 6”.

The property referred to in paragraph 6 is a residential property in Bloemfontein, correct?

**MR MOKHESI:** Correct.

20 **ADV PRETORIUS SC:** Paragraph 7.2 and the statement in paragraph 7.1 is that correct – true?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Paragraph 7.2:

“Sodi was interested where after the Lekomo [?] family trust represented by myself concluded a commercial transaction. The

terms of the commercial transaction are contained in a written agreement annexed as Annexure D.”

We will get there now. Correct.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The third statement you make in paragraph 7 says:

10 “It needs to be recorded that at this juncture that the Asbestos Audit which was conducted by Blackhead Consulting Pty Limited was already finalised at the time the transaction was entered into.”

At that stage certainly the stage the agreement was entered into payments were still being made to the Joint Venture, is that correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** Paragraph 7.4 reads:

20 “Sodi in terms of the provisions of our agreement cause payment of the amount of R650 000.00 to the trust account of Fraumo Veman [?] Joubert Attorneys in order to settle Sodi’s portion of the purchase consideration in respect of the property investment.”

Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** Now we know that Sodi did not purchase the property – the trust purchased the property, correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And Mr Sodi himself had no interest in the trust, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** So we know that Mr Sodi had no real  
10 right in the property. He did not own it whether via a trust or otherwise, correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** The only obligations and rights that he had appear in the agreement which we will refer to in a moment, correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** You say that:

20 “Sodi was interested where after Lekomo Family Trust represented by myself concluded a commercial transaction.”

Let us look at FS1 page 91 please. Correct me if I am wrong or putting the position incorrectly. That is the signature page of the agreement?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** It is signed by yourself on the 1 April

and by Mr Sodi on the 1 April.

**MR MOKHESI**: Yes.

**ADV PRETORIUS SC**: If one goes to page 89 you will see the first page of the agreement.

**MR MOKHESI**: Page?

**ADV PRETORIUS SC**: 89 of FS1. You see that?

**MR MOKHESI**: Yes.

**ADV PRETORIUS SC**: It is an agreement between Blackhead Consulting Pty Limited and the Lekomo Family Trust – IT444/2015[B].

**MR MOKHESI**: Correct.

**ADV PRETORIUS SC**: That is the registration number of the trust?

**MR MOKHESI**: Correct.

**ADV PRETORIUS SC**: This agreement was signed was it in this form each page is initialled on the 1 April 2015, correct?

**MR MOKHESI**: Yes.

**ADV PRETORIUS SC**: And the...

**MR MOKHESI**: Yes.

20 **ADV PRETORIUS SC**: Registration details of the Lekomo Family Trust are there is type face, correct?

**MR MOKHESI**: Yes.

**ADV PRETORIUS SC**: We know from documents that are attached that the trust was indeed registered in 2015 but the trustee from FS1 page 84 if you would go there was signed

on the 4 May 2015 you see that?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** The various trustees signed and you as the founder trustee signed in Bloemfontein on the 4 April 2015. This document was the trust deed ...

**CHAIRPERSON:** I am sorry what page did you say we should go to Mr Pretorius? Did you say we should go...

**ADV PRETORIUS SC:** Page 84.

**CHAIRPERSON:** Did you say 84? 84.

10 **ADV PRETORIUS SC:** This is – 84 – this is the signature page of the trust deed.

**CHAIRPERSON:** Oh okay.

**ADV PRETORIUS SC:** The first page is at page 62.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** So the trust deed was officially created or officially signed and the trust created on the 4 May 2015, correct?

**MR MOKHESI:** Yes.

20 **ADV PRETORIUS SC:** And it is only after that that the trust could have been given a registration number because it did not exist before 4 May 2015, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** 4 May – yes 4 May 2015. So when the agreement was signed in April there was no trust firstly and it could not have had a registration number because it



could not have been registered by that date.

**MR MOKHESI**: Okay. The...

**ADV PRETORIUS SC**: Can you explain that?

**MR MOKHESI**: Can I just...

**ADV PRETORIUS SC**: It seems to me that the...

**MR MOKHESI**: Can I respond to that?

**ADV PRETORIUS SC**: The – well perhaps you should explain before I suggest an examination.

**CHAIRPERSON**: And please look this side.

10 **MR MOKHESI**: Okay. We – in terms of the agreement to form a trust was already there. Indeed, the agreement was concluded on the 5<sup>th</sup>; the trust was subsequently formed thereafter. The – the trust number was put there later. This is what I – we – in terms of the [00:16:50] that the – was going to be used around for the acquisition of this – of this property indeed agreement was that I would form a trust. Although indeed the number the trust was registered later and the purchase of the property of course also was later. But the agreement had already been reached.

20 **ADV PRETORIUS SC**: Let us get to whether the agreement of April reflects the correct facts in a moment. But I understand it reasonable to conclude that the trust was created as a vehicle to conduct this transaction.

**MR MOKHESI**: We already had an agreement Mr Pretorius. We already had an agreement even though the trust was

registered later. Because currently the trust – the only asset that the trust holds is this asset.

**ADV PRETORIUS SC:** So my proposition that I am putting to you seems fair Mr Mokhesi that you decided with Mr Sodi to create a trust that would own the property.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** The answer was yes?

**MR MOKHESI:** Correct.

**CHAIRPERSON:** is that right the answer was yes.

10 **MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And so the insofar as the agreement was entered into before the trust was created it records something that could not have been correct. Because at the time the agreement was entered into no trust existed yet the agreement reflects that the trust did exist at the time.

**MR MOKHESI:** There was no trust at the time but the agreement was that we will form – I will form a trust.

**ADV PRETORIUS SC:** Yes alright so we are at least on the same pages as it were. The way that this arrangement was  
20 made from Mr Sodi's point of view he makes a payment to the trust account of an attorney, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** If one follows the trail that payment then is allocated to the benefit of the Lekomo Trust, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** So – and the property is not registered either in your name or in Mr Sodi's name, correct?

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** Even though it is a joint investment.

**MR MOKHESI:** Ja.

**ADV PRETORIUS SC:** Correct.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** So nowhere in Mr Sodi's books as it were does it appear that he made a payment for your benefit  
10 or for the joint investment let me put it neutrally. Nowhere does it appear that he is the owner of a property together with you in any record. Correct?

**MR MOKHESI:** Well I do not know what actually is in Mr Sodi's [mumbling].

**ADV PRETORIUS SC:** Well it does not appear – it would not appear in any bank accounts that...

**CHAIRPERSON:** Well he means there is no documents that would reflect that anywhere. He means there is no document anywhere that would reflect that Mr Sodi owns the property  
20 or has rights into the property.

**MR MOKHESI:** No he only has – he only has a not real right I think personal right in terms of...

**ADV PRETORIUS SC:** Yes but apart from that agreement which creates the personal right as opposed to the real right that Mr Sodi has as investor in a property and that is another

issue that maybe Mr Sodi can explain. There is no official record in other words there is no – nothing in the deeds office that shows that Mr Sodi owns a property with you. There is nothing in any bank account that shows a payment to you. Correct? All that exists is a payment to an attorney's trust account. That is in Mr Sodi's records presumably. And it does not show his interest in a property together with you. There is no document that would show that except the agreement privately entered into between  
10 you and he.

**MR MOKHESI:** In respect of the property.

**ADV PRETORIUS SC:** Yes.

**MR MOKHESI:** That is the agreement that - is it – yes.

**ADV PRETORIUS SC:** Yes. As far as you are concerned there is no record in your bank accounts of money being received from Mr Sodi, correct?

**MR MOKHESI:** No it could not be – it could not – the record that exists is the record in the attorneys.

**ADV PRETORIUS SC:** Yes.

20 **MR MOKHESI:** Right. Plus you know there is a trait about that plus that for the acquisition of the property in which instance I have on my side I have raised 60% of the required through a bond and him 40% of the property.

**CHAIRPERSON:** Please look this side.

**MR MOKHESI:** Sorry, sorry Chair.

**CHAIRPERSON:** Just so that – I do not hear.

**MR MOKHESI:** I am saying – I am saying the record that is – that is available is the record – it is what goes to the transferring or the transferring attorney and plus the purchase later stage in – on the – on the deeds – on the title deed which indicates the full amount plus what I have raised 0% of the required capital and 40% of – the full amount is reflected.

**CHAIRPERSON:** But Mr Pretorius' proposition or question.

10 **MR MOKHESI:** Yes.

**CHAIRPERSON:** Is that even in your bank accounts there would be nothing that would show that Mr Sodi put in this amount for this joint venture between the two of you concerning this property.

**MR MOKHESI:** It cannot be on my....

**CHAIRPERSON:** Is that correct, is that not correct?

**MR MOKHESI:** Yes but it cannot be on my bank account if the – if our agreement was for investment in a property – in properties. It could not be in my bank account.

20 **ADV PRETORIUS SC:** Well whether it could not be or was not the fact that it – nothing appeared in your own bank accounts in relation to any money given to you by Mr Sodi.

**MR MOKHESI:** This money is not given to me it is for investment purposes. Maybe let me try and indicate that the property that is in Bloemfontein that is what my primary resi

– it is not my primary residential property.

I am staying in that property because I work in Bloemfontein. That is the only reason why I had to do it and I also stay there for – sorry – I also stay there – you know if you want to stay in a place for more than three years the rule of thumb is instead of renting you must buy. And I have stayed indeed for the past three years or so before this I had already changed – I had rented and moved twice from different places simply because the – the landlords were  
10 selling at that particular – and I could not get the 100% bond from the bank.

Why I could not get a 100% I – ABSA picked up that I had a – a judgment against me which was obtained by SARS and therefore my credit rating could not be in a position to offer me to be able to raise the 100% bonding. I must also indicate that before I get to know that Mr Sodi is investing in properties I had also approached family members who are in – who are also albeit in a small way who are also involved in property investment but they could not come to me – after  
20 they – they could not – they were not in the position to support me in that because of the commitment at that particular time. So this was not – and – this was not money for me because it has got to go back to Sodi as an investor. First the guaranteed capital plus whatever surplus or profit one of 60/40 profit sharing.

**CHAIRPERSON:** But you – it seems from what you just said that you needed to have – you needed accommodation in Bloemfontein, is that right?

**MR MOKHESI:** Correct.

**CHAIRPERSON:** And you had challenges in getting a full bond because of the SARS judgment, is that right?

**MR MOKHESI:** Correct. Which I was not aware of.

**CHAIRPERSON:** Sorry?

**MR MOKHESI:** I am saying which I was not aware of.

10 **CHAIRPERSON:** Until ABSA raised it.

**MR MOKHESI:** Until ABSA raised it.

**CHAIRPERSON:** Yes. Yes. Yes. You then – you then approached Mr Sodi, is that right?

**MR MOKHESI:** Correct because I learned that he – he also invests in property. He has – he has investment in property.

**CHAIRPERSON:** Yes and then the two of you had a discussion about investing in some property?

**MR MOKHESI:** Yes.

20 **CHAIRPERSON:** And from what I see it looks like you were not talking about properties you were talking about just one property.

**MR MOKHESI:** Just ...

**CHAIRPERSON:** Just one property, is that right?

**MR MOKHESI:** Especially that – that yes.

**CHAIRPERSON:** A specific property.

**MR MOKHESI:** That specific property.

**CHAIRPERSON:** Had you identified the property by the time the two of you spoke?

**MR MOKHESI:** No we have not.

**CHAIRPERSON:** You have not.

**MR MOKHESI:** There is not much here. Let me try and explain Chair – this process Chair. You see if – because when we enter into that type of [00:28:40] it cannot just be any property it has got to be a property that can demonstrate  
10 the appreciation in value because issues like location and so on becomes important right.

Now if you – if you – with all this particular issues you will normally say to the estate agent this is what I am looking for right. And it must also be a secure property because that is not my primary residence and I must not be worried when I am away for an extended longer period that you know what is happening there and so on.

So – and the area as well becomes key – becomes very important as well. Now you give the – the estate agent to  
20 say right this is what I am looking for and indeed he goes out and he identifies a – a property. To say this is the property that I think which indeed is the property that is secure it is in an area – in fact it is a new area in Bloemfontein over – over twenty up till now. You know, on its turn, it has been... the prices have been going there at 16... ag, sorry, at 11%. That



information is... had been going there at 11% per annum, right.

Now, and obviously, if you have to ask somebody to invest. You know if I were to ask you to say: Please, invest with me in this particular programme.

The question is why should I invest with you when I can take my money, for example, and put it elsewhere? In the bank where there is a risk-free. You know, you sleep very well. You do not have to worry and then you will get your...

10 You must demonstrate that you are going to get a return on investment that is more than what you would get if you were to put in a risk-free investment.

Now what is the most... what is a risk-free investment in... that is available around? You know, not even the bank. The absolute risk-free investment that you can compare it with it is a Treasury Bonds Investment which forms the basis.

If I take this money for a period of an investment of seven years and put it in a Treasury bond, how much will I  
20 get in terms of value of that investment?

Obviously, the Treasury bonds have got different maturity periods, okay. I am just trying to give the thought what... the thought behind this particular issue.

**CHAIRPERSON:** Ja.

**MR MOKHESI:** Okay. The Treasury bond that matches the

maturity period of this investment is R197 which is 5.5 CPI of a rate of 5.5% because it is the safest investment that is risk-free that is available that will match the investment period or the maturity period of that which is seven years.

Okay, it was issued in 2001 but the maturity period of it is December 2023 which nicely makes the seven... this... ag, for the seven years of that investment.

Now what I have done on all... in terms of the return of the investment for the portion of... he will come out better  
10 than when he play it... when he puts that money in a risk-free investment of 5.5.

So the sums that I worked out, if he puts that for that particular seven period, it works out roughly around 950 000. But if he invests in this particular for a seven-year period, he will get first his full capital 950 plus approximately roundabout 350 000 which works out 1.1 million that he will get on his investment.

How does that happen for example? Now the bond that are taken on the one million, in fact, all the risk that release  
20 for the properties are with me okay and not with me. That means, your property rates, property insurance, suretyship and so on. They are with me.

Now how does that happen? The loan period of the one million bond that I have taken, it is over a period of 20-years. The instalment on that it is roughly around about

7 800. The interest, it is 6.8. This is the contract that I have signed with the bank.

Now I am not paying 7 600. I am actually paying 15 000 of that bond, of that particular bond. Why? To reduce the repayment period and by so doing, I have halved the repayment period. Instead of 20-years to 10-years.

Now the balance of the capital as at the end of... in period seven, in seven years will be roughly around about 300 000 in the manner that I have been paying consistently  
10 more.

I think you will also appreciate and know that if you pay more on a bond, you tend to reduce the period very quickly because bond payments' interest on that are, you know, the bond is... it is on a daily basis. Interest is charged on a daily basis. It therefore pays... it pays to pay a little bit more.

Which then says at the time when we were selling the property because right now, the properties in that particular area, you know, the last saves(?) from September... from  
20 August up to September, for example, the lowest was at 1.8 and the highest was 2.6.

Now if I were to sell this particular property now, I will easily sell it for 2 million. However, I cannot do at this particular... because the only person who will benefit currently out of the... if I were to sell it now, it will be the

other party and not myself.

Taking into consideration that currently all the costs that relays to those properties are with me. So at the end of... I will have to wait for seven years to be... to sell so that it can be for mutual benefit of both of us because currently, the favour is on his side given the risk that I have taken.

**CHAIRPERSON:** But the idea between the two of you of investment and property was limited to this property. Subsequent to this transaction, the two of you did not  
10 involve... did not get involved in any other properties together, or did you?

**MR MOKHESI:** Well, he himself has got investment in other properties as ...[intervenes]

**CHAIRPERSON:** Yes, but the two of you?

**MR MOKHESI:** It was only to this particular ...[intervenes]

**CHAIRPERSON:** Only this property?

**MR MOKHESI:** Only in particular to this property.

**CHAIRPERSON:** Yes. Mr Pretorius.

**ADV PRETORIUS SC:** As I understand from your answer  
20 two facts at least emerged. The first is that you could not raise a bond beyond a million rand. Correct?

**MR MOKHESI:** I could not.

**ADV PRETORIUS SC:** The second is that you intended to live in the house and did live in the house.

**MR MOKHESI:** Yes.

**ADV PRETORIUS SC:** So in order to obtain a house worth R 1.6 million in a secure estate with all the attributes you have spoken of, you needed assistance. Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** And you have been able with your limited ability to raise bond finance or delimited ability to raise bond finance to live in that house since 2015. Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** Would you that, at the very least, 10 after seven years, as you say it on your calculations, this arrangement between you and Mr Sodi would have been mutually beneficial.

**MR MOKHESI:** At this stage, if... as I have indicated, it is mutually beneficial, okay, in terms of the period. Because understand that all, what I will refer as landlord expenses, so to speak, are with me.

**ADV PRETORIUS SC:** Sorry. Yes, had you finished?

**MR MOKHESI:** Okay.

**ADV PRETORIUS SC:** I did not want to interrupt you. I am 20 sorry. If you have not finished, please ...[intervenes]

**MR MOKHESI:** No, what I am saying. The point I am trying to make Mr Pretorius is. You know, the amount of... all the expenses, your maintenance, property, taxes, insurance and over and above that...

I have also indicated that I am paying more to reduce

the repayment period and possible at the end of ten years ...because in these instances, the plan is after seven years, either two things will happen, right? I will refinance the property further or simple sell it outright. Alright?

**ADV PRETORIUS SC:** Yes, I understand.

**MR MOKHESI:** And make the calculations in terms of what should have been, okay?

**ADV PRETORIUS SC:** Can ...[intervenens]

**MR MOKHESI:** But... Okay.

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

**MR MOKHESI:** That is the decision that one will have to make at that particular... but his original investment is guaranteed.

**ADV PRETORIUS SC:** Well, that is the point we will come to in a moment. Can you explain why Mr Sodi who wants to invest in property, would not register a share of that property in his name but limit his rights to the rights against a family trust? Can you explain why he would do that?

Ordinarily, an investor in property would want rights in  
20 that property. I would understand. But in this case, all he does is enter into an agreement with a trust and presumable any collapse of this whole scheme would leave him with rights against a trust only.

**MR MOKHESI:** Well, how would it so collapse in these instances because... it is what it is Mr Pretorius. I do not to

say why would he do that?

**ADV PRETORIUS SC:** Because something could happen to you. You could go insolvent. You could fall ill. God forbid, you could ...[intervenes]

**MR MOKHESI:** Ja, so much the reason.

**ADV PRETORIUS SC:** Too much... sorry.

**MR MOKHESI:** Okay.

**ADV PRETORIUS SC:** Thank ...[intervenes]

**MR MOKHESI:** Okay. Alright. Sorry, sorry.

10 **ADV PRETORIUS SC:** For one or other reason, you could stop payment. That property could be attached by the bank. All that Mr Sodi would have would be rights against a family trust which might at that stage just be an empty shell. He does not have the security of this investment in the property. That is strange.

**MR MOKHESI:** Okay alright. Let us look at what is the value of this particular house and the value of the... or the bond itself, where it is. Now, what... now assuming that... assuming what you are saying ...[intervenes]

20 **CHAIRPERSON:** I am sorry Mr Mokhesi ...[intervenes]

**MR MOKHESI:** Oh, I am sorry, sorry.

**CHAIRPERSON:** I am sorry. I am going to interrupt you. I think you seek to answer Mr Pretorius' questions on the basis of what the value of the house is now. I think his question requires you to cast your mind back to the time the

agreement was made to say, he is saying to you. Mr Sodi...

One would have expected that Mr Sodi would insist on having rights in the property itself rather than having you did it with it personal rights. Personal rights in terms of the agreement.

**MR MOKHESI:** H'm.

**CHAIRPERSON:** So he is saying that is strange. Are you able to explain why he would have done that in the light of the risks that he has already articulated?

10 **MR MOKHESI:** Oh, okay.

**CHAIRPERSON:** And I think I would add because you did say that he is involved in a lot of properties. Now somebody involve in a lot of properties would know definitely that if he really has an interest in that property, he should have rights in the property. So that, despite that probable knowledge of his part ...[intervenes]

**MR MOKHESI:** Okay.

**CHAIRPERSON:** ...he decided to agree to an arrangement which did not involve such rights, it is strange. Are you able  
20 to say why that is not strange as you see it or is strange but it should be understood in a certain context?

**MR MOKHESI:** Okay maybe... you know, maybe to try and answer for Mr Sodi.

**CHAIRPERSON:** Well, you are not answering for Mr Sodi. You are answering for yourself because you see this



transaction occurs between you or your family trust and Mr Sodi about four, five, six months or so after Mr Sodi's company has been given the job that it was given if you look at the Service Level Agreement when it was signed.

**MR MOKHESI:** Alright.

**CHAIRPERSON:** H'm.

**MR MOKHESI:** Maybe Chair, it could be in the manner of the commitment that I put or the risk that I placed myself in the property, the investment part of it to say, I am more than  
10 him in terms of the proportion in that particular property. The suretyship and so on.

Now, that... and further that one has... you know, until such time we are... we have, you know, have come to the end of the term, for a lack of a better word.

In other words, end of the term of the seven years or when I have insisted or kept away from, you know, putting the trust at risk, either by trading and so on.

That I have done with the trust but the trust also commits further in terms of its obligations beyond what it  
20 has. Beyond what it has done. The first... the main attributor of this trust, of course, is the bank. And it has also built some sort of equity through...

I will say, through acceleration of payments on my side so that there is neither risk for myself or for the investor. So that perhaps could have been a reason.

**CHAIRPERSON**: But do you accept the proposition that this is strange that he was prepared to agree to an arrangement in terms of which he would have no rights in the property itself? His rights would be limited to personal rights in terms of the agreement. Do you accept that that is strange particularly or somebody who is quite involved in properties?

**MR MOKHESI**: Well, I have put up the proposal and he has accepted it Chairperson.

**CHAIRPERSON**: Yes.

10 **MR MOKHESI**: So...

**CHAIRPERSON**: Yes.

**MR MOKHESI**: You know, it was upon him to say: No, this is further what I wanted.

**CHAIRPERSON**: Yes.

**MR MOKHESI**: You know and so on.

**CHAIRPERSON**: Yes.

**MR MOKHESI**: Different investors will have the ...[intervenes]

**CHAIRPERSON**: Mr Pretorius.

20 **ADV PRETORIUS SC**: Mr Mokhesi, if one looks at the documentation relating to this arrangement and agreement and assuming that it is genuine and not just a cover for a donation to... and that is an assumption that is made here for the purposes of these questions. But it is not accepted. Certainly, by the legal team as necessarily a correct

assumption.

You were able to buy a property in which you were to reside now for at least five years with, at that time, R1.6 million when you could only raise a bond of a million rand. Correct?

**MR MOKHESI:** Yes, one million.

**ADV PRETORIUS SC:** Not only did you enjoy personal occupation of the house but also you enjoyed the benefit of what you have described as a potentially profitable  
10 investment after seven years. Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** Which you would not have had, either which you would not have had, had Mr Sodi not invested R 650 000,00 in the scheme. Correct?

**MR MOKHESI:** Ja, but that is an investment Mr Pretorius. I think I made that point to say it is a commercial transaction.

**ADV PRETORIUS SC:** Yes, but had he not made that investment, you would not have enjoyed in that residence in that house by ...[intervenens]

20 **CHAIRPERSON:** I am sorry, Mr Pretorius.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** I think Mr Mpofu wants to say something. You can say it from where you are.

**ADV MPOFU:** Oh, okay.

**CHAIRPERSON:** Ja.

**ADV MPOFU:** Thank you. Chairperson, I am... I have left this for a little bit because I did not want to interrupt Mr Pretorius. So I think now it was getting into the area ...[intervenes]

**CHAIRPERSON:** The area that ...[intervenes]

**ADV MPOFU:** Yes because it is clear what Mr Pretorius is doing. The witness might not be aware.

**CHAIRPERSON:** H'm.

**ADV MPOFU:** He is now establishing an element of a crime  
10 which is the benefit or potential benefit.

**CHAIRPERSON:** H'm.

**ADV MPOFU:** And that is exactly where... we are not supposed to go. He, of course, is not dealing with other elements, like *mens rea* and so on but we all know that this is a crucial element of some of the things that are being investigated, allegedly investigated.

**ADV PRETORIUS SC:** Well, just two points Chair. The first is that there must be a positive assertion that this is an incriminating question and reliance must be made on that  
20 assertion. So what Mr Mpofu has said, appears to have said and one can accept that.

**CHAIRPERSON:** You confirm Mr Mpofu?

**ADV MPOFU:** Yes, I do. I do confirm that.

**CHAIRPERSON:** Okay.

**ADV MPOFU:** Well, that is the crux of the objection.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** The second is. We have done our homework in relation to this and other matters. You will know the publication of beer(?) on commissions of inquiry, international leading publication, where he deals with the question of incriminating issues or questions.

In order to be fair to the witness, it goes further than simple: Did you commit a crime, yes or no?

Such a question that might elicit elements of an offence  
10 or lead to further investigations which may expose an offence, is a grey area but... yes, it is an incriminating question insofar as it seeks to establish an element of a crime.

**CHAIRPERSON:** Okay. That then, I guess that was not your last question?

**ADV PRETORIUS SC:** No.

**CHAIRPERSON:** Or was it?

**ADV PRETORIUS SC:** No, I have more questions.

**CHAIRPERSON:** Okay. Okay the you move to other  
20 questions then.

**ADV PRETORIUS SC:** And I am not clear that Mr Mpofu did that to cut me short. [laughing]

**CHAIRPERSON:** [laughing]

**ADV PRETORIUS SC:** Okay let us leave aside the issue of benefit. I think the question has been answered in any

event. The issue is now whether it can be used against you.  
The agreement itself...[intervenes]

**CHAIRPERSON:** Let me ask this question Mr Pretorius before you proceed. Mr Mokhesi, you did say that Mr Sodi has a lot of properties in which he is involved. Would you know whether he has a property development business or is it properties that he just buys?

**MR MOKHESI:** Ja, what I have... he invests in ...[intervenes]

10 **CHAIRPERSON:** In properties.

**MR MOKHESI:** ...in properties.

**CHAIRPERSON:** Ja.

**MR MOKHESI:** You know, in various areas.

**CHAIRPERSON:** Yes, okay.

**MR MOKHESI:** All in the Free State.

**CHAIRPERSON:** Okay. Okay.

**MR MOKHESI:** I think in the Eastern and Western Cape and so on.

**CHAIRPERSON:** Okay your voice is ...[intervenes]

20 **MR MOKHESI:** Sorry.

**CHAIRPERSON:** I think...[intervenes]

**MR MOKHESI:** Ja. I am saying, he... I know that he invests in properties. Like, in... I know that in the Free State, he has invested. Even in properties, I think as well in the Western Cape ...[intervenes]

**CHAIRPERSON:** Ja, your voice goes down.

**MR MOKHESI:** And so on.

**CHAIRPERSON:** Ja. Okay you know that he invests in many properties. Is that right

**MR MOKHESI:** Yes.

**CHAIRPERSON:** Okay. He could have invested in any property that he liked in the area where this particular property on his own without you? Do you know or do you not know whether he could have done that on his own?

10 **MR MOKHESI:** I honestly do not know whether he could have done it on his own.

**CHAIRPERSON:** Yes. Well, you see, when one looks at the agreement that the two of you concluded, one gets the impression that he was not bothered about this R 650 000,00. He did not bother to say: I must be part... I must be one of the owners of the property.

He paid the R 650 000,00 and on the assumption that this agreement was... is genuine, concluded the sacrament. And maybe basically to assist you.

20 Otherwise, he did not need to have any... to invest in any property with you. He could have invested on his own as he has done with other properties. And maybe he was assisting you.

**MR MOKHESI:** Well, there are properties where ...[intervenes]

**ADV MPOFU**: Chairperson, sorry.

**CHAIRPERSON**: Sorry. [laughing] You say even the Chairperson... [laughing]

**ADV MPOFU**: Yes. I think Mr Pretorius will have to be the adjudicator.

**CHAIRPERSON**: [laughing]

**ADV MPOFU**: Because I am objecting to the question of the Chairperson.

**CHAIRPERSON**: [laughing]

10 **ADV MPOFU**: I think Chair.

**CHAIRPERSON**: Yes?

**ADV MPOFU**: In fairness, I understand what Chair is trying to say but ...[intervenes]

**CHAIRPERSON**: Yes. Okay. No, that is fine. You do not have to respond to that. Mr Pretorius.

**ADV PRETORIUS SC**: Yes. I am entitled Chair to answer questions insofar as they reflect on Mr Sodi's conduct.

20 **ADV MPOFU**: What... I am sorry, Chair. Of course, Mr Pretorius is correct but the in relation to the real question of self-examination and so on. But the... what I am object against is for him to ask this witness to speculate on whatever was happening in the mind of Mr Sodi. As I say, outside of the main issue which is the self-incrimination issue.

**CHAIRPERSON**: Yes.



**ADV MPOFU:** It is a waste of time because it is not  
...[intervenes]

**CHAIRPERSON:** I think let us wait until there is an  
objection from the question.

**ADV MPOFU:** Yes.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** All I intend to do is to put to you  
certain clauses of the agreement so that I can understand  
what you say about those clauses. What I would wish to do  
10 and if there is an objection, we can deal with it at the time.

If one goes to FS1 at page 89, you will see there that  
that is the agreement. FS1, page 89.

**CHAIRPERSON:** Time flies. I see we are two minutes past  
one. But I think we are close to finishing, are we not?

**ADV PRETORIUS SC:** Well, Public Protector's findings.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** I will be very brief in my questions.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** That I can undertake.

20 **CHAIRPERSON:** Okay maybe let us continue. What is your  
estimate?

**ADV PRETORIUS SC:** Of how long my questions will take?

**CHAIRPERSON:** Ja and answers ...[intervenes]

**ADV PRETORIUS SC:** It will take a very short time. Five to  
ten minutes. But it is the answers I cannot control.

**CHAIRPERSON:** Ja. Okay Mr Mpofu, I think let us try and continue.

**ADV MPOFU:** I am very indebted.

**CHAIRPERSON:** Ja, so that when we take lunch, we are done with Mr Mokhesi.

**ADV MPOFU:** Thank you, Chair.

**ADV PRETORIUS SC:** Yes. Thank you.

**CHAIRPERSON:** Okay alright. Let us do that.

10 **ADV PRETORIUS SC:** Alright. Let us try and move as fast as we can.

**CHAIRPERSON:** Well, I know that there is a time when I allowed Mr Mokhesi quite some leeway in explaining... I did so deliberately. I could have cut him short but I thought it is an important part, at least for him, to give that explanation. So but in order for us to try and finish reasonable soon, I might interrupt and keep him to the questions.

**ADV PRETORIUS SC:** Yes. And I will try and avoid questions that are merely putting the exact issues I want to raise in the context.

20 **CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** And I will go directly there. Paragraph 2.5.

“The Lekomo(?) shall be entitled to rent the property to whomever it so desires.”

Was the property rented to anybody?

**MR MOKHESI:** It was not rented.

**ADV PRETORIUS SC:** Did you pay rent?

**MR MOKHESI:** As I have indicated. All that I am doing, I am paying additional ...[intervenes]

**ADV PRETORIUS SC:** Alright. So you did not pay rent?

**MR MOKHESI:** I did not pay rent but, you know, I am far... there are expenses that I am carrying.

**ADV PRETORIUS SC:** Yes. Paragraph 2.7 says what will happen if the property is not sold within seven years. Now  
10 Mr Sodi has given evidence in respect of this and it needs to be clarified.

“If the property is not sold within seven years, then Lekomo shall pay Blackhead its initial investment of R 650 000,00. Its proportionate share of the rental income, less any expenses incurred for the maintenance of the property.”

Now we know there is no rental income. Correct?

**MR MOKHESI:** H'm.

**ADV PRETORIUS SC:** Oh, you will have to say yes.

20 **MR MOKHESI:** Yes, yes.

**ADV PRETORIUS SC:** And 3:

“An amount equal to R 65 000,00 per annum in respect of the capital appreciation of the property.”

Correct?

**MR MOKHESI:** Correct.

**ADV PRETORIUS SC:** If, however, and I am referring to 2.8 now.

“If the property is disposed of, sold and that agreement, each party shall receive their initial investigation. The parties agreed to share the capital appreciation and the parties will share any rental income less expenses.”

Correct?

**MR MOKHESI:** Correct.

10 **ADV PRETORIUS SC:** But again, we know there is no rental income. Of course, there is an anomaly in paragraph 2.7 which says that if the property is not sold, Blackhead is paid out and says where after the trust shall retain full ownership in and to the property. Of course, it has always had full ownership, you know that, correct?

**MR MOKHESI:** That is correct, ja.

**ADV PRETORIUS SC:** There is a clause and the import of those clauses are a matter for argument and submissions and we can deal with that independently. Paragraph 8:

20 “The parties confirm that the terms of this agreement and negotiations leading up to its conclusion are confidential and will not be disclosed to any third party.”

Why was it necessary to insert that clause?

**CHAIRPERSON:** I am sorry, what clause is that?

**ADV PRETORIUS SC:** 8.

**CHAIRPERSON:** 8, okay.

**MR MOKHESI:** Well, Chair, I took this as a standard agreement between two – in any way it does not in any event exclude parties like commissions or legal – but not private parties.

**ADV PRETORIUS SC:** It appears to exhibit an intention to keep the terms of this agreement secret. Otherwise what you will see [inaudible – speaking simultaneously]

10 **MR MOKHESI:** Only for – only for the people who are – the Commission is, for example, I am just making an example. Commission is entitled to this information.

**ADV PRETORIUS SC:** I am not saying it has been breached. What I am asking is why have it in the agreement in the first place if not to keep this agreement secret?

**MR MOKHESI:** No, Chair, I do not know.

**ADV PRETORIUS SC:** No comment?

**MR MOKHESI:** No comment.

20 **ADV PRETORIUS SC:** Let us then move to the findings of the Public Protector, they appear in bundle FS3. It is not necessary for you to go there, let me just introduce the series of ...[intervenes]

**CHAIRPERSON:** Before that, Mr Pretorius, I am sorry, before that. This agreement, Mr Mokhesi, as I said, was

concluded about what, five, six months after the appointment of the joint venture to do the job.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** Now there was a part of the job that had not been done, namely the removal of asbestos. So this agreement was entered into at a time when Blackhead had been appointed to do a job that had two tasks. Let us say it may have finished doing the first part but I had not started on the second party, namely the removal of  
10 asbestos, is it not and as far as you knew at the time you took it that they were accredited to do the second part of the job. So was it not problematic for you to do that?

**MR MOKHESI:** At the time ...[intervenes]

**CHAIRPERSON:** In other words, my question is, as HOD was it right for you to enter into this arrangement even if you were doing so through your family trust with Blackhead in circumstances where Blackhead had been appointed by your department to do a certain job the first part of which they may have finished but the second part of which was  
20 still to be done?

**MR MOKHESI:** Chair, I am sorry...

**CHAIRPERSON:** Yes, is it one of those?

**MR MOKHESI:** Yes, it is one of those. The first part is quite, to be fair to you, Chair, you know, the first part where you obviously establishing the sequence, I think that

is – I cannot object to that.

**CHAIRPERSON:** Ja.

**MR MOKHESI:** But the second part where he either has to say that he was capable or not, clearly that...

**CHAIRPERSON:** Well, maybe if we do not look from a legal point of view, let us look at it from an ethical point of view. How is that? From an ethical point of view, Mr Mokhesi, was it fine for you to enter into this agreement in these circumstances at the time?

10 **MR MOKHESI:** Well, this was a commercial transaction, Chairperson, you know, inviting somebody to come and invest with you on specific terms which are purely commercial and that individual could either have said yes or no, I am not interested, because it was purely commercial from that point of view.

**CHAIRPERSON:** But are you entitled to enter into such a commercial transaction ethically as head of department with an entity that was in this position such as Blackhead at the time, namely had been appointed to do two tasks? It  
20 had done one, there was still a task that it was still going to do.

**MR MOKHESI:** So the Chair is saying on a commercial whether it...?

**CHAIRPERSON:** From an ethical point of view as HOD, you know, was it ethically appropriate for you to enter into

this commercial transaction with a service provider to your department who one, had done the first part of the job but was still to do the second part?

**MR MOKHESI:** Okay, at – one was at around – at that particular point in time I think at – when we went to the second, indications were that they will – we will not continue and I will indicate what came out at that particular point in time. It was a - you know, the differences in prices, the irregularity at that particular time was already  
10 flagged up not in terms of the other issues but in particular in terms of the 650 versus 850. So from our point that, you know, it will have ended there and then and not continue.

**CHAIRPERSON:** What would have ended then and there?

**MR MOKHESI:** I am saying the first phase and not the second phase.

**CHAIRPERSON:** Yes?

**MR MOKHESI:** Because it turns out, you know, that 650 versus the 850 thing rendered the whole thing irregular.

**CHAIRPERSON:** Yes.

20 **MR MOKHESI:** The entire – even though we later learned that these other factors also came into play.

**CHAIRPERSON:** So are you saying that at the time you entered into this commercial agreement, as you call it, with Blackhead, you had – you were aware, you had come to the conclusion that the contract was irregular, the contract with



Blackhead to do this job and that therefore it was not going to – phase two as not going to be done.

**MR MOKHESI:** It was not going to – phase two was not going to – but also, Chairperson, not – also issues that I have learnt - where I learnt that this particular individual is involved in investment in properties and I already, as I have indicated earlier on, I did not - you know, I did not start with it ...[intervenes]

**CHAIRPERSON:** You did not what?

10 **MR MOKHESI:** Start with it, I started with family members who were also involved in this particular investment in properties as ...[intervenes]

**CHAIRPERSON:** Yes, okay, just ...[intervenes]

**MR MOKHESI:** I learnt in the process that he is also – he also invests in properties and that is why I approached...

**CHAIRPERSON:** Yes, okay. Let us – just to make progress, go back to my question. I get the impression that your answer to my question is yes, it would not be ethically appropriate for you as HOD to have entered into  
20 this commercial transaction if Blackhead was still going to continue and do the second part of the job. Am I right?

**MR MOKHESI:** Let me put this way to you, perhaps maybe to assist. Maybe on hindsight, Chairperson, to respond directly to that question, maybe I should not have.

**CHAIRPERSON:** Okay. So you are saying on hindsight?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** You think it was not ethically appropriate.

**MR MOKHESI:** On hindsight.

**CHAIRPERSON:** On hindsight, yes. But at that time, you saw nothing problematically about it or did you see something ...[intervenes]

**MR MOKHESI:** Particularly because I saw this as a purely commercial transaction.

10 **CHAIRPERSON:** Yes.

**MR MOKHESI:** And that is why it had to be recorded in that manner and also my trusteeship as well be disclosed, you know, in the...

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Also, ja. So it could ...[intervenes]

**CHAIRPERSON:** So at that time, you did not see anything wrong with entering into this transaction from an ethical point of view, is that right?

**MR MOKHESI:** At that time, yes.

20 **CHAIRPERSON:** And that was because you saw this as simply a commercial transaction.

**MR MOKHESI:** I saw that as commercial transaction and also the disclosure of my trusteeship in a disclosure form. You know, we are also – every year we are required to disclose our...

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** So the issue about whether Blackhead was still going to do or not do the second part of the job, namely the removal of asbestos, that was not an issue that influenced you in ...[intervenes]

**MR MOKHESI:** No.

**CHAIRPERSON:** In entering into the commercial transaction.

10 **MR MOKHESI:** No, I was not influenced by that.

**CHAIRPERSON:** You were not influenced by that. But as a matter of fact, was that the position at that time or is there something that arose later namely that they were not going to do the second part of the job, namely the removal of asbestos?

**MR MOKHESI:** Well, it – we – because of, as I have indicated, because we learnt of the 650/850 at a later stage, it came to my attention that Treasury was not approached at that time because that was the only thing  
20 that we knew.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Plus as well as – because what prompted that was actually when the investigation of the Public Protector started.

**CHAIRPERSON:** Yes. But you say that arose later?

**MR MOKHESI:** That arose later.

**CHAIRPERSON:** Yes. So the only thing that made you believe that you could enter into this transaction with a service provider at that time was simply that this was a commercial transaction.

**MR MOKHESI:** It was a commercial transaction.

**CHAIRPERSON:** But that reason, Mr Mokhesi, does not sound convincing to me because if that was a good enough reason, it would mean government officials could have  
10 these commercial transactions with service providers any time because they say commercial transaction whereas my understanding is ethically it is precluded because you do not want any perception that you may be doing favours for a particular service provider because of any transaction or arrangement or closeness that you may have with them.

**MR MOKHESI:** Chair, I appreciate where you are coming from and I have indicated that on hindsight because I indicated it was a commercial transaction, my trusteeship was declared, I had no intention of hiding that transaction,  
20 it is auditable or it is traceable, you know, for lack of a better word and one wanted to keep it in that particular level or a commerce transaction so that you deal with it in that particular case in an event that anything happens and I contributed substantially more in that particular transaction as well, in that particular transaction, just to

show what is it. But maybe on hindsight I should not have.

**CHAIRPERSON:** You see, I have some difficulty in accepting – maybe later on when I have more time to look at everything, I might not have the difficulty but I have some difficulty in accepting the reason that you give as justification for entering into the transaction because I am thinking if any of your officials had come to you and said, you know, I want to have this kind of transaction with Blackhead while Blackhead was doing business with the  
10 department and they came to you as HOD for advice, would you not have said no, you cannot do that? Would you not have said that?

**MR MPOFU:** Yes, Chair. I am sorry.

**CHAIRPERSON:** Okay, Mr Mpofu?

**MR MPOFU:** Yes. No, I object to that question, Chair.

**CHAIRPERSON:** Yes.

**MR MPOFU:** Not so much again on the technicalities.

**CHAIRPERSON:** Ja.

**MR MPOFU:** But in fairness to the witness, Chair, and of  
20 course I do not want to be putting words in the witnesses' mouth. The witness has indicated, Chair, that the issue of disclosure, which is very important at least in the area that we are discussing now of the ethics of...

**CHAIRPERSON:** Ja.

**MR MPOFU:** And it is a grey area which is almost always

I misunderstood, Chair, that the duties is not so much not to do something always rather than to disclose it, if you have done it, so that let us postulate what the Chair was talking about earlier. If the second phase – let us assume the second phase was still going to be tendered for, then Mr Mokhesi would have had a duty not to sit, for example, in that decision making on the basis of the disclosure that he would have made of this transaction. That is where his ethical duties stand, not so much that he must not breach or speak to someone or not even do a commercial deal if he wants to but he must – as he long he knew the ethical consequences would be that, then he would not be able to adjudicate on anything. So it is an objection in that light.

**CHAIRPERSON:** I understand what you say.

**MR MPOFU:** Yes.

**CHAIRPERSON:** But, you know, as the HOD and the accounting officer, I expect that from time to time officials would come to him for guidance.

**MR MPOFU:** Yes.

20 **CHAIRPERSON:** So I just want to see how he would have – yes, thank you. How would you have advised an official in your department saying HOD ...[intervenes]

**MR MPOFU:** Chair ...[intervenes]

**CHAIRPERSON:** I am sorry, let me finish.

**MR MPOFU:** Oh.

**CHAIRPERSON:** HOD, here is my situation, I want to do exactly what you did, I want to do it but the service provider has a relationship with the department and so on and I do not want to do something wrong.

**MR MOKHESI:** Chair, I will also do not want to do it, because it has never happened in my experience, it has never happened. However, what normally happens is the disclosure part of it where you then pick it up because normally the adjudicators of that particular thing will be the  
10 Public Service Commission.

**CHAIRPERSON:** Yes but remember, he is coming to you before he enters into the transaction. He is coming to you before he enters, he wants to know whether he is precluded from entering into this kind of transaction.

**MR MOKHESI:** Chairperson, it has never happened.

**CHAIRPERSON:** And what is the position of the department?

**MR MOKHESI:** Yes, it has never happened that somebody comes and I will want to know any DG or HOD who said  
20 staff members has come on this particular thing. All they have to comply – because there are rules.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** All they have to comply with are the rules that are set out in terms of that and then you measure that against those particular rules.

**CHAIRPERSON:** And would the rules permit him to enter into this kind of transaction provided he discloses or would [inaudible – speaking simultaneously]

**MR MOKHESI:** Yes, there are disclosures that we have because you also have to – you have to disclose that. Now I think lately there has been a rule that says you cannot do business with the state, right, as I say, but before you could provide you disclose, you know? And those are the developing trends over time and so on.

10           Now to ask me that question in a way, you know, is actually unfair to me because it has never happened. You can put it to any HOD or DG and that.

**CHAIRPERSON:** Well, it is just – it calls for knowledge of the rules or policies of the department to say as HOD I know that we have a policy that says A, B, C about this or I know the policies do not say anything about this or I know they say you may do it provided you do this or that, that is what the question calls for. But if you say look, I do not know what my advice would have been, that is what you  
20 can say.

**MR MOKHESI:** Yes.

**CHAIRPERSON:** You do not know what the answer would have been. Okay, Mr Pretorius?

**ADV PRETORIUS SC:** Two points arising out of that, Chair. The first is that we know that at the time the



agreement between Mr Sodi and Mr Mokhesi or his trust was entered into, payments were still continuing in relation to the so-called first phase, if that reference can be made and they were being continued in controversial circumstances and we have heard evidence about that, notwithstanding, for example, the Auditor-General's findings of irregularity of the underlying agreement. So that is the first issue. It is a matter of record, we need not take it further.

10           But the second point is a more general point, of course, Chair, is that the matter of concern to the Commission and the evidence leaders not only that this conduct might be criminal activity but it appears from evidence, including this evidence, but other evidence as well that it is very easy to disguise a transaction, it may be a transaction that is said to be a deposit on a car or a repayment of a debt or payment of a debt accumulated in a pub, there are various ways that it can be done and it seems that a line must be drawn where, as a matter of

20 policy, this type of activity is not allowed, whether legitimate or illegitimate to avoid this type of matter happening. So if I may move on to the Public Protector issues, Chair.

**CHAIRPERSON:** Yes. Who prepared this agreement for you, Mr Mokhesi?

**MR MOKHESI:** Chair, I made an input on this agreement and I gave it to Mr Sodi to finalise and make an input as well.

**CHAIRPERSON:** There was not lawyer involved.

**MR MOKHESI:** No, certainly not from my side.

**CHAIRPERSON:** Yes, okay. So he ...[intervenes]

**MR MOKHESI:** Certainly, from my side because I was inviting him.

**CHAIRPERSON:** So Mr Sodi was ultimately responsible  
10 for putting it together with your input?

**MR MOKHESI:** With my input.

**CHAIRPERSON:** Yes. Okay, alright. On the disclosure – I am sorry, on the disclosure, Mr Mokhesi, is it correct that the disclosure you are talking about is the disclosure within your department?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** Is that right?

**MR MOKHESI:** Yes.

**CHAIRPERSON:** Yes.

20 **MR MOKHESI:** My trusteeship in the trust.

**CHAIRPERSON:** Yes but what you disclosed was that you are a trustee of your family trust, is that right?

**MR MOKHESI:** Correct.

**CHAIRPERSON:** You did not disclose that you received – you did not disclose that Mr Sodi had made this

contribution in this commercial transaction of which the family trust was [inaudible – speaking simultaneously]

**MR MOKHESI:** No but, Chair, this is not in my personal capacity.

**CHAIRPERSON:** Yes, it is in your family ...[intervenes]

**MR MOKHESI:** Because an impression here is created that I received it in my personal capacity.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Now this is a joint venture between –  
10 okay, maybe ...[intervenes]

**CHAIRPERSON:** A commercial transaction.

**MR MOKHESI:** A commercial between two individuals.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** I hold a trusteeship and I did disclose who the trustees including the beneficiaries are in that trust plus the – what the number because you also have to disclose that particular issue and from time to time the Public Service Commissions who investigate all this, once you disclose whether it is your membership in a company  
20 and so on and so on, they do independently investigate those and a few months later they give out a report about what parties are doing.

**CHAIRPERSON:** Is the family trust had not been used in this transaction and you had entered into this arrangement with Mr Sodi in your personal capacity, would you have had

to disclose in the department that there was this arrangement?

**MR MOKHESI:** Chair, I will not - you know, my marginal tax rate is 45%, okay? Now I cannot use and receive the money directly. You know, you have to use some sort of a tax-efficient structure in a way because I am at the highest at 45% and this might be – if it comes directly – and this is what informed the formation of a structure like that in the main, right? Number one.

10           Number two – and also you do not want to mix up – because I also have assets and properties in my personal capacity between myself and my spouse. Now, if you bring in a third party in this type of ...[intervenes]

**CHAIRPERSON:** Okay, Mr Mokhesi, what is the answer to my question, is it yes, you would have had to disclose it if you had entered into it in your personal capacity or is it no, it would not have had ...[intervenes]

**MR MOKHESI:** Yes, no, you have to disclose it.

**CHAIRPERSON:** You would have had to disclose it.

20 **MR MOKHESI:** In a personal capacity.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Like all others that are in my personal capacities that I am disclosing.

**CHAIRPERSON:** So one advantage of using the trust to enter into this transaction is that you would not have to

disclose this amount because you did not get into the arrangement in your personal capacity, is that right?

**MR MOKHESI:** It is not an advantage?

**CHAIRPERSON:** H'm?

**MR MOKHESI:** It is not an advantage, it is a commercial ...[intervenes]

**CHAIRPERSON:** But, Mr Mokhesi, it is an advantage because you told me that you could not get a hundred percent bond, you needed a place for accommodation.  
10 ABSA could not give you a full bond, you needed somebody in order to get accommodation beyond R1 million. You spoke to Mr Sodi, this arrangement was done, you were then able to live in the house. That is a benefit, is it not, the advantage otherwise you would not have had.

**MR MPOFU:** Chairperson...

**CHAIRPERSON:** Mr Mpofu?

**MR MPOFU:** I am sorry, sir, I thought my day was going to be easy but it looks like it is not. Chair, with greatest of respect that is exactly the question that Mr Pretorius  
20 refrained from asking.

**CHAIRPERSON:** Yes.

**MR MPOFU:** That you are putting about the benefit.

**CHAIRPERSON:** Yes, okay.

**MR MPOFU:** Yes.

**CHAIRPERSON:** Okay. No, I will not insist that he

answers it.

**MR MPOFU:** Thank you, Chair.

**CHAIRPERSON:** Yes, Mr Pretorius, continue.

**ADV PRETORIUS SC:** There is related question which is not prohibited by the regulation, Chair, if I may ask it. Mr Mokhesi, how many of the other beneficiaries or trustees enjoyed rent-free accommodation of the property?

**MR MOKHESI:** I am the only one staying in that house. I am the only person who stays in that house. I have  
10 indicated that that is not my primary residence.

**ADV PRETORIUS SC:** Let us move on to the last issue if we may, Mr Mokhesi, and that is the Public Protector's findings. I certainly do not want to invite long debate in reviewing the Public Protector report but the Public Protector did make certain findings and if you wish to highlight anything, any fact that you might be aware of to challenge the particular finding I am going to put to you, you are of course free to do so and it is fair to give you that opportunity because no doubt the Chair will take  
20 account of the findings. So I am going to put to you several findings and you can just say no comment or yes, I know a fact that calls that into question or I agree with the finding, okay?

**CHAIRPERSON:** I think Mr Mpofu seems to want to ...[intervenes]

**MR MPOFU:** Yes, Chair, again I do not want to baffle Mr Pretorius but he can make a choice, so it is not a formal objection but, for the record, the witness does not wish to challenge any finding made by the Public Protector or comment on it at this stage. If he wants to review the Public Protector's report he will do it like everyone else, so I do not see the futility of reading the report to him.

**ADV PRETORIUS SC:** Well, if Mr Mokhesi, you are happy with that statement, I think in any event you are bound by  
10 law by your representative's statement.

**MR MPOFU:** It is binding, anyway.

**ADV PRETORIUS SC:** If you don't want to challenge any of the Public Protector's findings, we can leave it there.

**MR MOKHESI:** Ja, I take legal advice from both my counsel so...[intervene]

**CHAIRPERSON:** And you pay him [laughing].

**MR MOKHESI:** And I pay him.

**ADV PRETORIUS SC:** And the law says you are bound by what you say.

20 **CHAIRPERSON:** And you are not paying him peanuts [laughing].

**MR MOKHESI:** Well Chair I will take the stand.

**ADV PRETORIUS SC:** Then I do not have further questions, Chair.

**CHAIRPERSON:** Yes.

**MR MOKHESI:** Thank you sir.

**CHAIRPERSON:** Mr Mokhesi I just want to make this comment and you may want to say something you might not have something to say. Incidentally I seem to see some parallel or some common features between what you said in relation to the disclosure of the question of disclosure of your trusteeship or non-disclosure of the amount because as you say it was nothing with the evidence of Mr Vincent Smith who gave evidence here some weeks ago. You  
10 might or might not have listened to his evidence but...[intervene]

**MR MOKHESI:** Mr Who?

**CHAIRPERSON:** Mr Vincent Smith he is a member of parliament or was a member of parliament I am not sure. He - while he was in parliament he had – on his version he had entered into a loan agreement with Mr Agrizzi of BOSASA for a certain amounts so that they could use that amount to pay for his daughter's studies overseas that he said that amount should be paid into the account of his  
20 company not to him personally that was done in regard to I think at least one amount.

But from BOSASA's - but when their lawyers sent that amount they said it was in regard to an accident, a car accident settlement but he insisted he said he had disclosed the company which received the money in his



disclosure in parliament, disclosure documents in parliament but he had not disclosed the amounts. So in your situation you have disclosed your trusteeship of the family trust but not the amount on your side because you say you were not getting this money personally.

So I am just saying there is another case or another witness who has given evidence which seems to have some similar features at least to some of the features of your evidence and incidentally on your version your commercial  
10 transaction with Mr Sodi of Blackhead was entered into in 2015 and you say it was for - there was the arrangement that after seven years if the property could be sold he to, he said his loan with Mr Agrizzi was entered into between 2015 and the repayment was going to be on the – to happen after seven years which is 2023, same 2023 as yours. So...[intervene]

**ADV MPOFU:** Chair, Chair. [laughing]

**CHAIRPERSON:** I think I am just saying I am observing just certain features you might not wish to say anything.  
20 [laughing]

**ADV MPOFU:** Yes, Chair he does not wish to say anything.

**CHAIRPERSON:** Ja. [laughing]. Okay.

**ADV MPOFU:** No Chair on a serious note the – I hear what the Chair is saying.

**CHAIRPERSON:** Yes.

**ADV MPOFU:** But I mean I do not know maybe Mr Smith's thing amounts to a criminal offence so I would not advise him to comment on any similarities.

**CHAIRPERSON:** No, no that is fine. Do you wish to reason or?

**ADV MPOFU:** No Chair, okay thank you very much Chair.

**CHAIRPERSON:** Okay alright. Mr Pretorius you are done.

**ADV PRETORIUS SC:** Yes, Chair it is safe to point out  
10 that the value for money issue was clearly found by the  
Public Protector against the department the Public  
Protector found no value for money.

**CHAIRPERSON:** Okay, alright I think Mr, might have mentioned that as well.

**ADV MPOFU:** Well Chair now Mr Pretorius is provoking me. [laughing] Chair my understanding was that he is partly right. So my understanding was that as the witness stated certainly there was some value for money whether it amounted to two hundred and fifty or not that is a  
20 debatable issue but certainly it is not as if there was just money that was drawn out there was some work that was done but I am sure that what Mr Pretorius meant, ja.

**CHAIRPERSON:** Okay, ja.

**ADV PRETORIUS SC:** Well the findings remain unchanged.

**CHAIRPERSON:** Yes, we at twenty to two Mr Mokhesi thank you very much for coming back to give evidence and I will excuse you now and if a need arises for the Commission to request you to come back, I am sure you will come back. But thank you very much and thank you to Mr Mpofu.

**ADV MPOFU:** Thank you sir.

**CHAIRPERSON:** We are going to adjourn for lunch and resume at twenty to three. We adjourn.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready Mr Pretorius?

**ADV PRETORIUS SC:** Thank you Chair. The next witness will deal with the housing matter and his name is Mr Tsoametsi.

**CHAIRPERSON:** Yes I have a file that does not seem to have his statement here FS17, is that the file I am supposed to have?

20 **ADV PRETORIUS SC:** Yes Chair. He does not have a signed affidavit.

**CHAIRPERSON:** Okay. Well I saw an earlier one or rather I saw a file that had his statement and I also saw one that had his...

**ADV PRETORIUS SC:** Yes it is unsigned Chair.

**CHAIRPERSON:** The transcript. So but you say I have got

the right one here.

**ADV PRETORIUS SC:** I will take you through what...

**CHAIRPERSON:** Ja okay.

**ADV PRETORIUS SC:** What is relevant Chair.

**CHAIRPERSON:** Okay. Please administer the oath.

**REGISTRAR:** Please keep the microphone on. Please state your full names for the record.

**MR TSOAMETSI:** Mmuso Martin Tsoametsi.

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

**MR TSOAMETSI:** No objection.

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

**MR TSOAMETSI:** Yes I do.

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

**MR TSOAMETSI:** So help me God.

20 **CHAIRPERSON:** Yes you may continue Mr Pretorius.

**ADV PRETORIUS SC:** Thank you Chair. Mr Tsoametsi there is a draft affidavit on record but it has not been attested to by yourself, am I correct?

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** In fact, it is a draft of the

investigators.

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** But you did interview the investigators and there is a transcript of that interview. I will just give the info – reference for the record Chair. It is at FS13 page 486 and following. You also gave evidence before a disciplinary inquiry in fact on two occasions, you recall that?

10 **MR TSOAMETSI:** I think it is one occasion but that is correct.

**ADV PRETORIUS SC:** Well you were recalled as I understand it to give evidence very briefly.

**MR TSOAMETSI:** It is possible yes.

**ADV PRETORIUS SC:** Anyway, those references are in FS17 page 767 and following and FS8 page 441 and following. If I may refer you to Bundle FS17 page 767 please. If you would go to page 767 please.

**MR TSOAMETSI:** I am there. 767?

**ADV PRETORIUS SC:** Yes please.

20 **MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** This is the transcript of your evidence before the disciplinary inquiry.

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** And I will in due course refer to it. During 2010 and 2011 Mr Tsoametsi what position did you

hold?

**MR TSOAMETSI:** I was Deputy Director General Local Government and Traditional Affairs.

**ADV PRETORIUS SC:** In the Free State Province.

**MR TSOAMETSI:** In the Free State Province.

**ADV PRETORIUS SC:** Yes. We know that there were various divisions and changes of name in the Free State housing or Human Settlements Department.

**MR TSOAMETSI:** The 20 – 2009/2010 financial year the  
10 department was called the Department of Local Government  
and Housing which means it had one Head of Department  
and two branches. One for housing and the other one for  
Local Government and Traditional Affairs. And I was  
responsible for Local Government and Traditional Affairs.

**ADV PRETORIUS SC:** To whom did you report/

**MR TSOAMETSI:** I reported to the HOD then who was Mr  
Kopung Ralikontsane.

**ADV PRETORIUS SC:** You have a B.Prop degree I  
understand?

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

**ADV PRETORIUS SC:** Have you ever practiced law?

**MR TSOAMETSI:** No.

**ADV PRETORIUS SC:** We have heard evidence about the  
sequence of events in 2010/2011 Mr Tsoametsi and I do not  
intend to take you through all those events. They become

relevant you will no doubt raise them when they do become relevant. But as I understand it and if I could take you please to FS13. As I understand it at some stage a meeting was called to deal with the question of under spending in the department, do you recall that?

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** It is dealt with in Bundle 13 at page 485 and following. Just to place this document on record. I am sorry page 485 of FS13.

10 **MR TSOAMETSI:** Okay.

**ADV PRETORIUS SC:** Now you were interviewed by the investigators of the commission during February of 2020, correct?

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** And what appears at page 485 of Bundle FS13 and following pages is a transcript of your interview.

**MR TSOAMETSI:** That is correct.

20 **ADV PRETORIUS SC:** Once again this interview deals with various matters and to the extent that you take issue with the contents of the transcript you of course may do so. But for the moment we at least from our side are going to assume that it is a correct transcript.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** If you would go to page 497 of that

bundle please. The department would have submitted a business plan to the National Department of Human Settlements for the year 2010/2011 correct?

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** And what occurred during the course of the year was that the National Minister notified the MEC and the DG at the Province or the Head of Department at the Province that there was a problem of under spending. That has been the subject of much evidence – we need not go  
10 into the detail what I am interested is – in is the response to that notice. Correct?

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** So the MEC and HOD receive a notice from the National Minister to the effect that the Province in the Human Settlements Department is under spending and the Minister requires some sort of response. That is the position where we start, correct?

**MR TSOAMETSI:** Yes the Minister...

**ADV PRETORIUS SC:** Yes.

20 **MR TSOAMETSI:** The Minister indicated under expenditure and requested the Province to present a plan of how do I deal with the under expenditure.

**ADV PRETORIUS SC:** Yes. And that we have known as the expenditure recovery plan?

**MR TSOAMETSI:** That is correct.



**ADV PRETORIUS SC:** Was a meeting then called in the Province to deal with that request from the Minister?

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** You deal with that at page 504 of the transcript. By way of introduction you paraphrase the letter from the Minister at page 504. It is not really a quote of the letter it is your paraphrasing of what the letter contained. You say the letter says:

10                    “We are concerned we are not going to spend  
and normally goods so in the event you do  
not have a plan. The money will be  
redirected to a province in need of additional  
funds or redirected back to the National  
Housing office. Please present a plan.”

Now although those were not the exact words of the communication that is the import of the communication?

**MR TSOAMETSI:** It is a general principle that is applicable in dealing with spending and under expenditure by the relationship between National and Provinces.

20 **ADV PRETORIUS SC:** Alright. In response to that communication a meeting was called as you have said.

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** That meeting would have taken place during September/October 2010?

**MR TSOAMETSI:** Correct.

**ADV PRETORIUS SC:** Who chaired that meeting?

**MR TSOAMETSI:** In the first meeting that I was invited in the chair was – or the MEC was present and the CFO was present. The HOD was not in the Province in that first meeting. I think he had an official engagement outside the Province. So the CFO stood in for her and the MEC was also present in that meeting.

**ADV PRETORIUS SC:** Yes. And who was the CFO?

**CHAIRPERSON:** But who chaired the meeting?

10 **MR TSOAMETSI:** I was not party to the original meeting Chair because I was called into a meeting that – where people were already sitting. So because the MEC is the most senior in that meeting it was the meeting of the MEC.

**CHAIRPERSON:** Yes so it would be the MEC.

**MR TSOAMETSI:** The MEC Chair.

**CHAIRPERSON:** Who chaired the meeting.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Ja okay.

**ADV PRETORIUS SC:** That is Mr Zwane.

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

**ADV PRETORIUS SC:** And you were present?

**MR TSOAMETSI:** I was called in then yes I was present.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** So you were called after the meeting had started?

**MR TSOAMETSI:** Yes Chair.

**CHAIRPERSON:** Do you have an idea how long after it had started or you do not know?

**MR TSOAMETSI:** I think it should have just been after maybe they have done a role call.

**CHAIRPERSON:** Oh just ...

**MR TSOAMETSI:** And then they ask who else is here then people said no Tsoametsi is in his office.

**CHAIRPERSON:** Yes.

10 **MR TSOAMETSI:** So I was called.

**CHAIRPERSON:** Oh so...

**MR TSOAMETSI:** Because when the meeting started and the purpose of the meeting was explained I was in the meeting.

**CHAIRPERSON:** Oh so for all intents and purposes you were there.

**MR TSOAMETSI:** I was in the meeting.

**CHAIRPERSON:** You were there throughout the meeting.

**MR TSOAMETSI:** Yes Chair.

20 **CHAIRPERSON:** In terms of substance.

**MR TSOAMETSI:** Yes Chair.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Alright you deal with the content of the meeting on page 507 towards the second part of that page. What was discussed? How did the Chair deal with the

meeting?

**MR TSOAMETSI:** The principle Chair was that we have received this concern from the Minister the Province is expected to develop a plan. I am expecting officials to develop a plan. And that is when we started to say what is it that we can do as officials.

**ADV PRETORIUS SC:** Were various problems associated with the under-spending issue discussed?

**MR TSOAMETSI:** In order for us to deal with a problem we  
10 had to go through what I will call for purposes of this presentation a project plan that when you – when you build a house you first need to make sure that you have the necessities. So the question was asked officials that are responsible for beneficiaries what is the – what is the plan; how far are you? Make sure that everything that needs to be done in relation to beneficiaries are attended to.

The second will be the component that deal with land availability. Sites so that people are able to build. So those officials were then mandated to do exactly that.

20 The there was a third responsibility that deals with technical officials that will then have to be in contact with organisation like NHRC that deals with technical quality assurance. They had to deal with that.

Then there were issues....

**ADV PRETORIUS SC:** Sorry to interrupt. The NHBRC?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Yes.

**MR TSOAMETSI:** Then there were issues around ensuring that the approved projects will then be captured. Normally we use a system – electronic system called HSS which is where approved projects, list of beneficiaries, sites will then be captured. So that had to be dealt with. And all that was then populated in terms of the – the plan and from there we then said how then do we turn around the original plan to  
10 meet the current challenge?

**ADV PRETORIUS SC:** Right. You said on page 509 of the transcript at the bottom of the page that after the problems had been discussed and I quote you:

“That is where I come in. A meeting says can you go and investigate? What is it that can be done? So I go out of the meeting.”

And Mr Swanepoel the investigator says to you:

“So who directed you?”

And you answer:

20 “The meeting it is a decision of the meeting that we said yes.”

Just explain please to the Chair what was happening there?

**MR TSOAMETSI:** Chair I thought we were still dealing with the development of the turnaround plan. The second

meeting that is being talked about.

**CHAIRPERSON:** Oh.

**MR TSOAMETSI:** Is the second meeting...

**CHAIRPERSON:** Later.

**MR TSOAMETSI:** That came later.

**CHAIRPERSON:** Okay.

**MR TSOAMETSI:** That was dealing with different scenarios.

**CHAIRPERSON:** Ja. Oh okay.

**MR TSOAMETSI:** So I will suggest that we deal with the  
10 plan, we conclude the plan and then we will go to the second  
phase which is the second meeting that now dealt with the  
issues of advances.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Yes it is not clear from the transcript  
here that there were actually two meetings. In fact, the – as  
one reads it.

**CHAIRPERSON:** But is your recollection that there were two  
separate meetings?

**MR TSOAMETSI:** There were – there were more than –  
20 there have been many meetings Chair.

**CHAIRPERSON:** There are many meetings.

**MR TSOAMETSI:** But for the relevance of what we – we are  
talking about.

**CHAIRPERSON:** Ja.

**MR TSOAMETSI:** It is where the MEC was present.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Remember we will then be going as officials

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** To develop this turnaround strategy.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** And look into technical issues.

**CHAIRPERSON:** So let us go back then to that meeting.

**MR TSOAMETSI:** To the plan.

10 **CHAIRPERSON:** Let us just say there is this meeting that you have testified about.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Which was chaired by the MEC.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Where the HOD Mr Mokoena was not present.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** And the CFO stood in for him.

**MR TSOAMETSI:** Yes Chair.

20 **CHAIRPERSON:** Now that meeting did you say that it ended on the basis that a turnaround plan must be developed?

**MR TSOAMETSI:** That is the one Chair I am talking about.

**CHAIRPERSON:** Yes. Yes. And different people who were attending the meeting had different issues to attend to?

**MR TSOAMETSI:** That is correct Chair.

**CHAIRPERSON:** Okay. What part were you required to attend to?

**MR TSOAMETSI:** In that there was no part.

**CHAIRPERSON:** You had no part in that one.

**MR TSOAMETSI:** No that – I had no responsibility that I had to follow up on at that stage.

**CHAIRPERSON:** Yes. Okay. So who were required to do what in terms of that meeting about the – the turnaround plan?

10 **MR TSOAMETSI:** Like I said Chair it – in that meeting it was executive managers so it was Chief Directors in the main.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** So the chief director who is responsible for the area that deals with land issues was then commissioned to go and look at those.

**CHAIRPERSON:** Ja.

**MR TSOAMETSI:** The Chief Director responsible for technical issues, engineering services was then given the responsibility to deal with that.

20 **CHAIRPERSON:** Hm

**MR TSOAMETSI:** The Chief Director that was responsible for planning and consolidation of all this information I think Maxatshwa was for planning. The Chief Director for technical services Mamike Mogele and then the Director for technical services engineering I think it is Ndada Koloji.



**CHAIRPERSON:** Hm

**MR TSOAMETSI:** So those were the type of colleagues that had to go and deal with responsibilities according to their job description.

**CHAIRPERSON:** And the responsibilities that they were given – the tasks that they were given those were intended to form part of the turnaround plan?

**MR TSOAMETSI:** That is consolidated turnaround plan.

**CHAIRPERSON:** They would consolidate and put together  
10 what they – the product of what they were going to do.

**MR TSOAMETSI:** Yes Chair.

**CHAIRPERSON:** Okay. So the meeting ended on that basis.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Was there an arrangement as to time frames to say how much time did, they have to do this? By when the turnaround plan should be ready?

**MR TSOAMETSI:** That – that was the first decision that was  
20 taken in that meeting. The second decision was that we are going to be meeting weekly and then we will produce this document and we will present it to the MEC and the HOD for their approval and then based on their approval or disapproval we will then take the process forward. So we were then meeting almost on a weekly basis and on a fortnight type of arrangement then the MEC will then come and see what is the progress in relation to finalising the

plan. Now in the second meeting when...

**CHAIRPERSON**: Oh before the second meeting. This first meeting you say was around what September or somewhere in September?

**MR TSOAMETSI**: Ja just September early October somewhere around there.

**CHAIRPERSON**: Yes. Okay.

**MR TSOAMETSI**: If I remember.

**CHAIRPERSON**: Okay.

10 **MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: And then you say from then on you had weekly meetings?

**MR TSOAMETSI**: We had – just officials.

**CHAIRPERSON**: Without the MEC?

**MR TSOAMETSI**: Yes.

**CHAIRPERSON**: And then you had bi-weekly meetings which involved the MEC?

**MR TSOAMETSI**: Yes Chair.

20 **CHAIRPERSON**: And the weekly meetings did they involve the HOD?

**MR TSOAMETSI**: The – no the weekly meetings – if he is available Chair he will come but in the main it was us.

**CHAIRPERSON**: Oh okay.

**MR TSOAMETSI**: As officials.

**CHAIRPERSON**: Okay.

**MR TSOAMETSI:** Those are consolidating this.

**CHAIRPERSON:** And he would be present at the bi-weekly meetings?

**MR TSOAMETSI:** At the bi - yes. Because those will then be the meeting where we are now expecting the buy in and the approval.

**CHAIRPERSON:** Yes. At a certain stage I guess the consolidation – the turnaround plan became ready, is that right?

10 **MR TSOAMETSI:** It became ready.

**CHAIRPERSON:** How long after the first meeting did it become ready more or less?

**MR TSOAMETSI:** I think within – within a space of two – two and a half weeks Chair.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Because remember all the information was available.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Projects had been approved.

20 **CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Contractors have been identified and approved.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** So it was a question of saying how do we make sure that we fast track spending in relation of the

different milestones.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Taking into account that we are only left with November, December and January.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** And utilising that period develop a turnaround plan and ensure that we – when it is approved, we go and we present it to the list of approved contractors and if they buy in into that we are then able to forward it to

10 National and say this is our plan.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Which we should be able to implement it.

**CHAIRPERSON:** Okay. Mr Pretorius do you want take over?

**ADV PRETORIUS SC:** These meetings that took place on a regular basis were these the so called War Room meetings?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** And you say every second week they would be chaired by the MEC?

**MR TSOAMETSI:** Second week yes by the MEC or the HOD.

20 **ADV PRETORIUS SC:** Correct. Let us go to the point where you came in. Where one of these meetings said to you please go and investigate what can be done?

**MR TSOAMETSI:** Because...

**CHAIRPERSON:** Was that one of the bi-weekly?

**MR TSOAMETSI:** No Chair.

**CHAIRPERSON:** Oh no it is a separate one.

**MR TSOAMETSI:** The ...

**ADV PRETORIUS SC:** Sorry just let me – just ask for your indulgence for a moment.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** We do not have a sworn statement of yours to work off.

**MR TSOAMETSI:** No I am fine.

**ADV PRETORIUS SC:** We only have your interview and so  
10 there may be some...

**MR TSOAMETSI:** Sequential...

**ADV PRETORIUS SC:** Some disconnect in the sequencing I accept that one hundred percent but that is all I have to go to. So – but I would like you to deal with that meeting.

**MR TSOAMETSI:** Well in dealing with this meeting now Chair. After – after we have received an in principle approval of the turnaround plan, we went to Welkom to go and...

**CHAIRPERSON:** Okay I am sorry – In principle approval by  
20 whom?

**MR TSOAMETSI:** By the HOD and the MEC.

**CHAIRPERSON:** Okay alright.

**MR TSOAMETSI:** Then we went to Welkom.

**CHAIRPERSON:** And that would have happened around about when?

**MR TSOAMETSI:** That will now be in the middle of October towards...

**CHAIRPERSON:** Middle of October.

**MR TSOAMETSI:** Yes. Now we are moving towards November.

**CHAIRPERSON:** Okay alright.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** And what was approved is what we have here as a..

10 **MR TSOAMETSI:** Ja what do we call it?

**CHAIRPERSON:** A recovery plan.

**MR TSOAMETSI:** Recovery plan yes.

**CHAIRPERSON:** That is what was approved.

**MR TSOAMETSI:** That is the one I am talking about.

**CHAIRPERSON:** Okay and then you took that to Welkom?

**MR TSOAMETSI:** So the recovery plan had an implication for the implementation on contractors. Because you needed to get their buy in for it to be realised. So that is where – that is the reason why we had to go to the meeting of  
20 Welkom and meet these contractors. So the...

**ADV PRETORIUS SC:** Before you go to the Welkom meeting it is important that we get the sequencing right. In – just have a look please at page 510. At the top of the page you say:

“All these things that I am talking is now

resolutions of the meeting to say we need to have a plan on this element so people must go out within the next five days, get what you can get so that you develop this implementation plan. So my responsibility was to say, how do we support contractors to get material and then you say, I called the Department of Human Settlements in Gauteng. They told you about the relationship with the builder's market and after that the meeting was called at Welkom.”

**MR TSOAMETSI:** No Chair.

**ADV PRETORIUS SC:** And that is what this transcript says but you – we are asking for your evidence.

**MR TSOAMETSI:** I am saying the meeting of Welkom.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Dealt with the issue of the implementation of the turnaround plan.

**CHAIRPERSON:** Huh-uh.

20 **MR TSOAMETSI:** And that meeting raised certain issues.

**CHAIRPERSON:** Just one second before you proceed.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** The – the turnaround plan or the expenditure recovery plan.

**MR TSOAMETSI:** Yes. Expenditure – oh let me –

expenditure recovery plan.

**CHAIRPERSON**: Maybe just – ja let us stick to the same terminology.

**MR TSOAMETSI**: Ja l ..

**CHAIRPERSON**: Otherwise somebody who reads the transcript will be confused whether we are talking about something else.

**MR TSOAMETSI**: Yes Chair.

**CHAIRPERSON**: So the expenditure recovery plan.

10 **MR TSOAMETSI**: Yes Chair.

**CHAIRPERSON**: The contractors would need to buy in into because it contemplated work being done building of the – building of houses during the December holidays, is that right?

**MR TSOAMETSI**: That is correct Chair.

**CHAIRPERSON**: That is why you needed their buy in among other reasons.

**MR TSOAMETSI**: Yes.

**CHAIRPERSON**: Okay alright. So you go to this meeting at  
20 Welkom and this is a meeting of officials of the Department.

**MR TSOAMETSI**: And the MEC.

**CHAIRPERSON**: And the MEC with the contractors.

**MR TSOAMETSI**: Yes Chair.

**CHAIRPERSON**: Okay alright. Continue.

**MR TSOAMETSI**: At that meeting...



**ADV PRETORIUS SC:** But before you go to that meeting, I know you will continue in due course. When did you speak to the Department of Human Settlements in Gauteng? Before or after this meeting?

**MR TSOAMETSI:** After this meeting.

**ADV PRETORIUS SC:** Okay.

**MR TSOAMETSI:** After this meeting. I will explain what triggered.

**CHAIRPERSON:** Yes, ja.

10 **MR TSOAMETSI:** This. So we go to this meeting then contractor raises three pertinent challenges that they are confronted with. The first challenge that they raised is the challenge to say it is – we are going to the festive period. Availability of material might be a challenge.

Secondly, we have a challenge of access to finance.

Thirdly by saying – by us as a department or as government saying to them that they must intensify where during the December festive period it will then require that they must employ more people which then means that they  
20 will have to be spending a lot of money with relation to the labour costs.

So these are the issues that they are raising. So we take – we take note of those issues and we came back to Bloemfontein. And this meeting that is being referred to then took place.

**CHAIRPERSON:** Now the issues they raised is it the fact that they might have to employ more people and the fact that there might be – so they would need money and the fact that there might be challenges in getting material. Those are the two issues they raised.

**MR TSOAMETSI:** Those three issues that...

**CHAIRPERSON:** Ja okay.

**MR TSOAMETSI:** That I mention out of contractors.

**CHAIRPERSON:** Continue.

10 **ADV PRETORIUS SC:** Which contractors were invited to the meeting?

**MR TSOAMETSI:** The contractors – the project recovery plan. That would be the contractors that we have appointed and approved as contractors that are implementing projects of 2010/2011.

**ADV PRETORIUS SC:** You say they were appointed?

**MR TSOAMETSI:** That is my assumption.

**ADV PRETORIUS SC:** Who appointed them?

20 **MR TSOAMETSI:** The normal procedure of appointing Chair in the department... just to go back a little bit. 2009/2010, whilst we were still in that department I have talked about, we have issued a tender.

Or even before that, I think, yes it is 2009 and we issued a tender and we requested PWC to assist us to develop a database and to be able to create different categories of

contractors according to their functionalities.

So that would then have been the data from the database that was utilised during that period but this database ...[intervenes]

**CHAIRPERSON**: Twenty... or two-thousand and...

**MR TSOAMETSI**: 2004 to 2009, it was an administration... after the election it was a particular administration. So during this period of this administration, we invited... we issued out a tender with PWC that developed database to  
10 run housing for that period.

**CHAIRPERSON**: Oh, okay alright.

**MR TSOAMETSI**: So in 2009, it then expired. It means, you need to re-advertise and get a new tender to be able to develop a database.

**CHAIRPERSON**: Database.

**MR TSOAMETSI**: So that is the process that we will follow, informed by the Supply Chain Management.

**CHAIRPERSON**: H'm.

**MR TSOAMETSI**: Yes.

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

**MR TSOAMETSI**: So when I ...[intervenes]

**CHAIRPERSON**: H'm?

**MR TSOAMETSI**: When I say they were appointed Chair because I was not partied to that process. I will assume that it is in alignment with that Supply Chain Management

process.

**CHAIRPERSON**: Alright. But the point is, you knew about the database that applied during the period 2004 and 2009.

**MR TSOAMETSI**: 2004 to 2009. Yes.

**CHAIRPERSON**: You do not know whether there was a database that was appointed after that.

**MR TSOAMETSI**: Yes.

**CHAIRPERSON**: But you assumed that there was.

**MR TSOAMETSI**: Yes, that... if I say, contractors are  
10 appointed in Human Settlements ...[intervenes]

**CHAIRPERSON**: Yes.

**MR TSOAMETSI**: ...I assumed that it had followed that process.

**CHAIRPERSON**: Ja, okay.

**ADV PRETORIUS SC**: Well, we know from evidence given in the last week Mr Tsoametsi that in 2010 a new data base was formed.

**MR TSOAMETSI**: Following the same process?

**ADV PRETORIUS SC**: No, not following any competitive  
20 tender process. Well, following a tender process that was abandoned. That is what happened in 2010.

**MR TSOAMETSI**: I will not understand, Chair. My understanding of a general principle is that the accounting officer will implement the Supply Chain Management policy of a department. And it will then require that you should go

out and advertise. And then through that process be able to develop. Now, if there has been deviation ...[intervenes]

**CHAIRPERSON**: When develop a database or develop what?

**MR TSOAMETSI**: To go through the same process that we had gone through, 2004 and 2009.

**CHAIRPERSON**: To open a database?

**MR TSOAMETSI**: Yes.

**CHAIRPERSON**: Alright.

10 **MR TSOAMETSI**: Now if there has been a deviation from that process, it should be a deviation that is approved by the accounting officer. So I am not so sure. Are we talking about him deviating from that normal process and approving the deviation or what are we talking about?

**ADV PRETORIUS SC**: No, Mr Tsoametsi. We are talking about your knowledge.

**MR TSOAMETSI**: Yes. I do not know ...[intervenes]

**ADV PRETORIUS SC**: Not your assumptions for the moment.

20 **CHAIRPERSON**: H'm, h'm, h'm.

**MR TSOAMETSI**: There are ...[intervenes]

**ADV PRETORIUS SC**: We have been told that in 2010, there was indeed a public procurement process ...[intervenes]

**MR TSOAMETSI**: Okay.

**ADV PRETORIUS SC:** ...that was initiated. The tender period expired. Oh, the tender validity period expired and the tender process was not reinstated or corrected. It was abandoned and a database was then compiled from various sources, a new database in 2010. That is what we know from the evidence. Do you know that that was not the case?

**MR TSOAMETSI:** I do not know.

**ADV PRETORIUS SC:** So I am asking then. This database that was used to inform the selection of contractors to be invited to the Welkom meeting, do you know where that came from?

**MR TSOAMETSI:** The database?

**ADV PRETORIUS SC:** Well ...[intervenes]

**MR TSOAMETSI:** It ...[intervenes]

**ADV PRETORIUS SC:** But all I am saying to you is, who was invited to the Welkom meeting?

**MR TSOAMETSI:** I have just said it... my assumption is that it is contractors that we approved to implement projects that were contained in the expenditure recovery plan.

20 **ADV PRETORIUS SC:** Yes. Now, how... what I am saying is. Who appointed those contractors or how were appointed?

**MR TSOAMETSI:** And I have just explained Chair that my knowledge is that they get appointed through the process of going out on tender, developing a database, selecting from a database, having recommending(?) to the MEC that these

are the contractors that must be appointed.

**ADV PRETORIUS SC:** Well ...[intervenes]

**CHAIRPERSON:** You... should you not answer Mr Tsoametsi be you do not know because you do not know if and whether there was a database pursuant?

**MR TSOAMETSI:** I have said that Chair but it looks like ...[intervenes]

**CHAIRPERSON:** Ja, you do not know how they were appointed. They were invited. Is that right?

10 **MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** At the Welkom meeting, they were invited.

**CHAIRPERSON:** Yes, they were invited but how they were selected ...[intervenes]

**MR TSOAMETSI:** I do not know.

**CHAIRPERSON:** ...to say, who must be invited, who must not be invited ...[intervenes]

**MR TSOAMETSI:** I do not know.

20 **CHAIRPERSON:** That you do not know?

**MR TSOAMETSI:** Yes, that was outside my ...[intervenes]

**CHAIRPERSON:** Yes, you assumed ...[intervenes]

**MR TSOAMETSI:** Yes, Chair.

**CHAIRPERSON:** ...that they must have been on a database.

**MR TSOAMETSI**: Yes, Chair.

**ADV PRETORIUS SC**: But whether that is so or not, you do not know.

**MR TSOAMETSI**: I do not know, Chair.

**ADV PRETORIUS SC**: Yes. Mr Tsoametsi, notwithstanding the fact that witnesses might be taken to task for saying I do not know.

**CHAIRPERSON**: [laughing]

**ADV PRETORIUS SC**: Sometimes it is a legitimate answer.

10 [laughing]

**CHAIRPERSON**: [laughing]

**MR TSOAMETSI**: Where I can help, I will be more than willing to do so.

**ADV PRETORIUS SC**: Thank you, Mr Tsoametsi. Anyway, we know that contractors were invited, a tender bid at the Welkom meeting. And you then, after that meeting, went back to the War Room.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: And was it at that stage that you  
20 were given a task to perform?

**MR TSOAMETSI**: So in this meeting ...[intervenes]

**ADV PRETORIUS SC**: Sorry, just before you go on. When would that meeting have taken place? Sometime in November?

**MR TSOAMETSI**: Chair, it is should still be within the



October. If it is in November, it should have been maybe early. Early. I am not definitely sure in terms of the dates but it is at this meeting that now we are reflecting on the outcome of the meeting of Welkom and ...[intervenes]

**CHAIRPERSON:** Who was attending this meeting?

**MR TSOAMETSI:** The meeting was chaired by the MEC, attended by the same teams that... the HOD was there. It was the meeting of the MEC and the HOD. And the CFO was there. And myself and all these colleagues that I have  
10 referred to as part of the executive management. So it is in this meeting that ...[intervenes]

**CHAIRPERSON:** And the CFO was Ms Dhlamini?

**MR TSOAMETSI:** Dhlamini, yes.

**CHAIRPERSON:** Ja, okay.

**MR TSOAMETSI:** So in this meeting, we then discussed and reflected on the issues that have been raised by the contractors. So the MEC asked the question: Why can we not support contractors and get material for them?

Because it is clear that if we are able to meet them  
20 halfway, they would be able to participate in this or that. And we will be able to go a long way in delivering on the commitments that we have made.

**ADV PRETORIUS SC:** Yes. So following on... if I may just interrupt you to get the sequence right. Your evidence is that following on from the Welkom meeting, there was,

presumable, a report back to the War Room and the MEC then came up with that idea?

**MR TSOAMETSI:** He came up with that question.

**ADV PRETORIUS SC:** Right.

**MR TSOAMETSI:** Then in that meeting, it... Chair, I will not be sure but you said I should not say I assume. But what I will not be sure. But the issue was raised to say: No, in the previous projects of the previous year, we had a situation where we have partnered with Nurcha and we are able to buy  
10 material for contractors to be able to contract in the project.

**ADV PRETORIUS SC:** For the record. That is n-u-r-c-h-a?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Right.

**MR TSOAMETSI:** So discussions took place about, is this the right way to go about? Will you be doing the right thing if we are saying we are buying material for...?

So the meeting decided that I should go and do a research on this advancement be formed by the fact that there was this Nurcha advanced payment that had taken  
20 place.

So I am given this task to go out and research on this matter. So that is where I started this research that I was talking about.

**ADV PRETORIUS SC:** Alright. As I understand it. The context in which that mandate was given to, was the tabling

of a proposal or an idea that the contractors be helped in some way by prepayment or some other means. And you were told: Please, go and research this matter. I understand that that would have been a factual research that you would... a piece of research you would do.

**MR TSOAMETSI**: The research were ...[intervenes]

**ADV PRETORIUS SC**: ...go and see how it can be done.

**MR TSOAMETSI**: Research whether it has been done with Nurcha. That will be the first thing. And secondly, as to how  
10 it can be done.

**CHAIRPERSON**: Well, I thought you also said at the meeting it was said that you should look at whether it would be right to do things this way.

**MR TSOAMETSI**: No, I am saying the discussions.

**CHAIRPERSON**: Yes, the discussions. Ja.

**MR TSOAMETSI**: It was not said that I should go and investigate whether it should be right.

**CHAIRPERSON**: Ja.

**MR TSOAMETSI**: I mean, out of the discussions, many  
20 views are being expressed.

**CHAIRPERSON**: Yes.

**MR TSOAMETSI**: But the end results were that, go and investigate this advanced payment.

**CHAIRPERSON**: Yes.

**MR TSOAMETSI**: Yes.

**CHAIRPERSON:** You see, if your mandate was go and investigate this issue, it could be argued that that included whether it will be lawful to do it, whether it would be ...[intervenes]

**MR TSOAMETSI:** Within the policy.

**CHAIRPERSON:** ...you got the right to do it within the policy.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** And whether it would be a wise thing to  
10 do.

**MR TSOAMETSI:** Yes, Chair.

**CHAIRPERSON:** You know, it could be argued to be quite broad.

**MR TSOAMETSI:** Yes, it is a broad mandate.

**CHAIRPERSON:** It is a broad mandate.

**MR TSOAMETSI:** You are being informed that ...[intervenes]

**CHAIRPERSON:** Yes

**MR TSOAMETSI:** ...go and see what is happening and  
20 come up with a plan.

**CHAIRPERSON:** Yes, that is right. Ja.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Now, so are you... I would ask the question. Is that how you understood the mandate to be as broad as that or not really?

**MR TSOAMETSI:** I just... it is just to get this broad mandate.

**CHAIRPERSON:** A broad mandate.

**MR TSOAMETSI:** And I went out with that understanding.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** That this is this broad mandate.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Go and out and see what is happening and comes with what ...[intervenes]

10 **CHAIRPERSON:** Yes, okay. Okay. Mr Pretorius.

**ADV PRETORIUS SC:** I think go into some detail and please itemise the mandate as you understood it.

**MR TSOAMETSI:** Ja, like I said Chair, the mandate was, go out and investigate this advanced payment taking into account that in the previous year it was done with Nurcha. That is how it was ...[intervenes]

**ADV PRETORIUS SC:** Yes, but ...[intervenes]

**MR TSOAMETSI:** But we never had any elements.

20 **ADV PRETORIUS SC:** Yes. Well, it never had any elements but you would go and investigate where it had been done and how it had been done.

**MR TSOAMETSI:** No, that was at my... the where and the how is what came out of my initial draft.

**ADV PRETORIUS SC:** So was in the mandate but the where and how came out of your initiative?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** But you... the mandate said: Go and investigate this prepayment system.

**MR TSOAMETSI:** I do not know it. Call it advance payment.

**ADV PRETORIUS SC:** Advance payment.

**MR TSOAMETSI:** Yes, call it so. Yes.

**ADV PRETORIUS SC:** Well, that is maybe an important difference and the terminology but you had to go out and  
10 investigate this advance payment system. There were no specific mandates given to you with... other than that broad mandate.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** What did you actually do then?

**MR TSOAMETSI:** So the first step that I did Chair was to go into the resources of National Parliament and try and find out as to what presentation has been made at that level by the National Department in relation to housing.

20 So if you go into all presentation of different portfolio committee, there is one. Portfolio Committee on Housing. That when national departments or any other entity appear, you are able to get their presentation of what is it that they are saying, what is the situation in relation to the sector.

So that my first take. So I went in there and I was able to get a presentation that deals with this area of 2009 to

2014, which is...

Remember Chair, that after the election of 2209, we now moved away from just implementing a project. We are now moving into a human settlement approach.

So the policy was no longer housing but it now became human settlement. And because it became human settlement, it had different elements that are trying to assist government to deal with.

So I went into that and I came across that presentation.  
10 And I also went into the National Department's website and I came across the policy on the creating new grounds which is a policy that was now giving meaning for this human settlements that we intend to implement.

In reading that policy, a problem statement was presented in that policy and the breaking new grounds. And to paraphrase that statement, it says.

Since the new dispensation since 1994, in the sector of human settlement, established and well-resourced and well-incapacitated contractors have pulled out of providing  
20 support government, creating an opportunity for SSME and medium contractors who lacks capacity.

In the main, they lacked capacity in financial access, in accessing material, quality material and in technical access. So in my mind, the same statement that was said by the contractors is now contained in a government policy to say,

this is a problem within the sector.

So I said to myself: Yes, there is a diagnose. But what is the prescription? Then I started investigating contractor development or contractor support. Who is doing that in the country? Is there something like contractor development or contractor support?

So I came across partnership established by Human Settlement Department of Gauteng. I called then to say: I am busy dealing with this type of research.

10 I see that we had a partnership between... with the private sector that you support contractors. Can you give me more information on that?

They then said: No, speak to our legal section. I spoke to the legal Section. The legal section says: Yes, we have what we call a tri-party agreement.

The building material, the government and the contractor where government is supporting the contractor but there is also partnership with this building material company.

I requested that copy to also be forwarded to me. So it  
20 was forwarded to me. So that was the second, now, part of my research outcome.

The third part was that I then went to Nurcha. One thing to understand, whether is it factual that they had this programme of supporting contractors within together with us as the department.



When I went to them Chair, it was at a stage when they were closing their offices of Free State but there were still officials there.

So the official then said to me: No, but the person that was managing this whole thing is having a private company. Mr Herschel. I do not remember. Herschel Coetzee or so.

So this company is first thing. I called into the office. I asked him: Did you have something like this that you had managed? And he gave me how they have managed it. He  
10 gave me a how to mitigate the risk.

In everything that we had said Chair is that you need to have partnership with the material suppliers. You need to have a very strong monitoring and evaluation team that would then be the one that is doing for yourself reconciliation of collecting of material and so forth. So I came back now with these three outcome.

And then I said, we have contracts with contractors. Are we not able to amend the contract that we have and create an addendum through this process that will ensure that  
20 contractors are able to be supported so that the original contract should then be able to be amended to include this support that we came about?

And that is what led to me putting the document that I put and that I have submitted to the HOD for consideration.

**ADV PRETORIUS SC:** Right. It seems to be that what you

did, was you looked at parliamentary records, you looked at the Nurcha experience and you looked at certain other experiences in Gauteng. Right? And you collated all those and you transformed them into the ideas into your document.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Correct?

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

**ADV PRETORIUS SC:** So at no stage did you sit down with a particular proposal and go to the Public Finance  
10 Management Act, the Housing Act or any other legislation and compared the proposal to the provisions of the legislation? You did not do a technical legal opinion?

**MR TSOAMETSI:** No. For me it was around, here is what I have found. I am of the view that maybe if we support the contractors through the contract that we have and we amend that contract and create an addendum through this tri-party system, we will have achieved what we wanted to achieve.

**ADV PRETORIUS SC:** Alright. What is of concern perhaps is, why was this being done in November of a financial year  
20 ending in March? Why had this work not been done earlier?

**MR TSOAMETSI:** Chair, because there was a concern triggered by the minister.

**ADV PRETORIUS SC:** So the ...[intervenes]

**MR TSOAMETSI:** The minister had raised to say: Look, I have approved your plan. We are now moving towards the

end of the financial year. There is no performance.

**ADV PRETORIUS SC:** Yes. That I think is consistent with what the other witnesses are saying.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** But the need for this plan was to address the problems of the minister ...[intervenes]

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** ...to avoid losing the money.

**MR TSOAMETSI:** Yes.

10 **CHAIRPERSON:** But the question that arises Mr Tsoametsi is. Here you, officials of the department are there. You were the Deputy Director General. I do not know if you were the only one in that position.

So you were the second in charge, I guess, in terms of hierarchy in the department. Maybe the CFO was on the same level as yourself, I am not sure. You were high up there.

The department had been given more than one billion rand, had been allocated 1 point, 1 point 4. I cannot  
20 remember how much of that came from the previous financial year but more than one billion rand to build houses during the 2010/2011 financial year. The letter of the minister, I think, came in October or is it September?

**MR TSOAMETSI:** I think middle September or ...[intervenes]

**CHAIRPERSON:** Maybe September.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** But it looks like you were about five or six months of the financial year had gone. And from what other witnesses have told me or at least one of them, no houses had been built as yet in terms of the 2010/2011 allocation.

There might be houses that were built with the 2009/2010 financial allocation. Now why is that it takes the National Minister in Pretoria to get to you say: Hey, man.  
10 There is a problem. We are not building houses. We are not spending.

You know, the money that has been allocated for the benefit of the people. Why does it take somebody in Pretoria to say: Hang on, what are you doing?

**MR TSOAMETSI:** Chair, that ...[intervenes]

**CHAIRPERSON:** You are part of the leadership of the department.

**MR TSOAMETSI:** I think Chair, there are two factors that I need to bring to attention. The first one is that this  
20 department was in transition. In transition in the sense that now there was a determination to say you are now having two departments.

This means that you are now going to have two heads of department. Now that is number one. Number two is that when you create that department, the people that gets to be

transfer into Human Settlement is not a total well-oiled, well-capacitated departments.

Because remember, the department will have different... you will have corporate service for example. When this transfer took place, Corporate Service did not go with it. So they needed to create their own new Corporate Service.

So the capacity was an issue with this department, number one. Number two Chair. I do not know whether it was put before you that there was a court challenge by  
10 contractors who were allocated for the previous, the 2009/2010, who took the provincial government to court because of the delays in allocating and appointing them.

So there was also that legal matter that was dealt with. So yes, the delays are the delays that are internal through this all, dealing with all these challenges. And the impact of that is therefore this delay therefore that...

Like Mr Pretorius now says, that including the management of the SEM(?), it ended up expiring. I mean, immediately it expires.

20 It then means you are confronted with a challenge or how now are you dealing with SEM when you have allowed this process to also collapse?

Now Chair, the point... you will then maybe asking as to, these things that you are saying, why did you not say in the department? That is like ...[intervenes]

**CHAIRPERSON:** The whole department was asleep.

**MR TSOAMETSI:** Yes, that is what I wanted to  
...[intervenes]

**CHAIRPERSON:** Until Mr Sexwale in Pretoria said: Wake  
up!

**MR TSOAMETSI:** That is what where I ...[intervenes]

**CHAIRPERSON:** Can you not see what is happening?

**MR TSOAMETSI:** That is what ...[intervenes]

**CHAIRPERSON:** You are spending money you are not  
10 working.

**MR TSOAMETSI:** Yes. That is where I want to come in  
Chair to say, I was not the DDG for both legs.

**CHAIRPERSON:** Yes, you were on Traditional Affairs.

**MR TSOAMETSI:** I was on Traditional Affairs.

**CHAIRPERSON:** And maybe you can be forgiven.  
[laughing]

**MR TSOAMETSI:** Now, that is where I come in to say, this  
issue that I am... I am talking about these issues as second-  
hand ...[intervenes]

20 **CHAIRPERSON:** You are not under housing.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** You were not dealing with housing.

**MR TSOAMETSI:** I was not dealing with housing.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** The only time I came to know that getting

involved in housing is when I was called in to that meeting for the first time, the one that we have dealt with.

**CHAIRPERSON:** Ja, it is worrying. I have mentioned it to one of the witnesses, maybe on Friday, about the lapsing of the tender validity period.

I said, but the people who were involved are supposed to have made a judgment call at a certain stage, because I was told that there were too many bids that had been put in and dealing with them and processing them took time.

10 That is why the period expired before the relevant committee could make the necessary decision. But I said, somebody should have made a judgment call to say: If we have got so many bids, we will not be finished within this time.

Therefore, we need to ask whoever has the authority to extent the period before it expires. But it is like people were sleeping.

**MR TSOAMETSI:** You will have head Chair that I have said in that period of 2004 and 2009, we went out on tender but  
20 we also appreciated the fact that we do not have capacity internally. And that is why we had appointed PricewaterhouseCoopers to be the one that is handling this volume.

Because obviously, people will have interest and the volumes would always be there. So that is why we had

appointed PricewaterhouseCoopers to be the one that collate all this data, prepare it, present it to us and then accept it and if it is approved then it became our database.

**CHAIRPERSON:** Okay. Mr Pretorius?

**ADV PRETORIUS SC:** Thank you. During the latter part of October, beginning part of November and perhaps further into November you had two documents that have been relevant to the evidence that we have heard this week, perhaps last week.

10           The first is the document that you prepared that signed on the 25 November 2010.

          The second was a document we have referred to as the expenditure recovery plan, it was actually a slide presentation, correct?

          The one that you were involved in developing was the document, let us call it the 25 November document.

**MR TSOAMETSI:** I will say I was part of both.

**ADV PRETORIUS SC:** Were you part of the [inaudible – speaking simultaneously]

20   **MR TSOAMETSI:** I was part of – the fact that I did not have specific function does not mean I was not part in.

**ADV PRETORIUS SC:** Alright.

**MR TSOAMETSI:** I was part of that because I was part of that meeting.

**ADV PRETORIUS SC:** Alright, now both documents had to



go to two committees which involved the National Department. Could you tell the Chair what those meetings were?

**MR TSOAMETSI:** No, Chair, the point that I was trying to convey to the investigators, which might have not come clear on the transcripts, is that when the Minister raised concerns and he say develop a plan and let your HOD present that plan to the Director General, immediately the plans are developed, they HOD of Free State will  
10 communicate with his technical counterpart with the Director General and share the plan with the Director General within intention that the Director General will then apply their mind and they advise the Minister. That is one communication channel that I was explaining and I indicated to say this communication channel in terms of intergovernmental relations is called Mintech because it is where technical officials are meeting. Then I have ...[intervenes]

**ADV PRETORIUS SC:** We have referred to it or other  
20 witnesses have referred to it as technical Minmec.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** But what is the correct abbreviation?

**MR TSOAMETSI:** The other way around, technical Minmec and then I am saying it is Mintech, so the

ministerial technical committee.

**ADV PRETORIUS SC:** That sounds better.

**MR TSOAMETSI:** Yes. Now the second part will then be the political oversight, political communication and that will be between the MEC that has the relationship to communicate with the Minister and the MEC will then be able to communicate and say in line with your concern, we have developed this plan and the plan has been forwarded to you.

10 **ADV PRETORIUS SC:** Alright.

**MR TSOAMETSI:** Those are the key channels [inaudible – speaking simultaneously]

**ADV PRETORIUS SC:** So there are two – in fact these two channels took place, these communications through these two channels took place at two meetings we know that were held in November 2010 on the 18 and 19 November of 2010. On the 18 November there was a technical Minmec or a Mintech and on the 20 November there was the political oversight meeting, the Minmec,  
20 where the Minister would have been with the MEC.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Now that second meeting we know that the MEC and the HOD were not present, Mr Maxatshwa attended, right? We have evidence as to what happened at that meeting or those meetings and we have

evidence – we have the minutes actually, which we have dealt with but what is interesting, you told the investigators that Maxatshwa and Mokoena came back from those meetings or Maxatshwa come back, reported to Mokoena and Mokoena reported back. What did they say?

**MR TSOAMETSI:** Chair, what I have said to them is that the approval to implement the expenditure recovery plan – even as I am seated here today, I have never seen any documentation confirming that what you are proposing as a  
10 plan is not acceptable to us. So based on that I assumed that there was approval to implement.

Then I also said, Chair, that there is letter that I have seen where the Minister was now threatening to take the money, that was written by the HOD to the Director General and when you look into that letter, somewhere it says based on the agreement that we have reached with the delegation from National, that meaning the delegation that was in the province, we agreed that we will be reporting on a quarterly basis to you. If in the evidence  
20 there is such a letter I will appreciate if you can go to it.

**ADV PRETORIUS SC:** We will get there. I will put ...[intervenes]

**MR TSOAMETSI:** It will explain, Chair, that where do I come from when I say there was an approval.

**ADV PRETORIUS SC:** Well ...[intervenes]

**CHAIRPERSON:** But am I correct in saying – in understanding your evidence to be that you are not sure that there was approval but you thought that – or you assumed that there was approval.

**MR TSOAMETSI:** The second part, Chair...

**CHAIRPERSON:** Yes?

**MR TSOAMETSI:** Is that the document that I developed in November, after developing that document – remember, I received the instruction where the two authorities were in  
10 the meeting, the political authority and the administrative authority which says go and research on this thing. So when I developed that document, I gave it to the HOD. I write it to the HOD and I gave it to him. He approved the document – he will come and deal with that – he approved that document. To me he said leave this document, I will come back to you. He later called me around about five and say the document has been approved, you need to start working on the preparations of documentations.

So at not stage did I get an impression to say this  
20 that you are trying to do has no approval whether from National or within the province.

**CHAIRPERSON:** But, equally, at no stage did you get told expressly by anybody that the National Department had approved the plan, is that correct?

**MR TSOAMETSI:** Expressly told that we are going to

present the plan.

**CHAIRPERSON:** Ja.

**MR TSOAMETSI:** But that is to approval, yes, Chair.

**CHAIRPERSON:** Ja, okay, alright.

**MR TSOAMETSI:** Yes, Chair.

**CHAIRPERSON:** Mr Pretorius?

**ADV PRETORIUS SC:** Alright, so I understand your evidence, you assumed that the plan could go ahead because firstly, you never saw a document saying that it  
10 could not go ahead and secondly, you referred to a letter, which we deal with in due course. In due course I will put the various versions of other witnesses to you for your comment but would you go to page 529 please of FS13?

**MR TSOAMETSI:** I am here.

**ADV PRETORIUS SC:** Do you see at line 9 – you see line 10 there in the left hand column?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Mr Tsoametsi says:

“Yes, so him and the HOD, it was Kaizer...”

20 That is Mr Maxatshwa, is it?

“...who was responsible for planning and development and the HOD, then they had to go and make that visitation to National.

Mr Gerhard Swanepoel:

“At Mintech”

Mr Tsoametsi:

“At Mintech”

Gerhard Swanepoel:

“Yes”.

And Mr Tsoametsi then says, that is yourself:

“Yes, in response to that letter. Then they came back and said we have approval, we can go ahead. Are you with me? Then we start to implement the project, so that is my book where I was involved.”

10 Is that a correct statement?

**MR TSOAMETSI:** That is the approval I was just indicating to Chair that it was assumed.

**ADV PRETORIUS SC:** No, but there are two versions.

**MR TSOAMETSI:** No, I am saying that is the approval to say I assumed that they have the approval.

**MR TSOAMETSI:** No, I accept that.

**ADV PRETORIUS SC:** It is not an assumption, it says you  
20 were told.

“They came back and said we have approval, we can go ahead.”

Can we now accept that they did not do that, you assumed?

**MR TSOAMETSI:** I accept that.

**CHAIRPERSON:** Well, Mr Tsoametsi, how can you now say you assumed because when you were interviewed by the investigators here, they asked you specifically at page 529, line 21, Mr Swanepoel says to you:

“That statement that you made now, are you a hundred percent sure about that?”

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** And that is the statement that you said they told you that there had been approval.

10 **MR TSOAMETSI:** Yes, Chair.

**CHAIRPERSON:** And your response is:

“That is the...”

And then he says:

“Are you categorically telling us that Kaizer and Gift came back from Mintech and said they had approval?”

And the transcript says you responded:

“Yes, I am saying so.”

Then Mr Swanepoel says:

20 “Is there some document saying that somewhere?”

And then you say:

“Kaizer and Gift will be able to provide it.”

Then Mr Swanepoel says:

“Okay.”

Then you repeat, you say:

“Yes, I am saying so.”

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** That seems very categorical.

**MR TSOAMETSI:** That is the categoric that I was explaining now, Chair, which you ultimately corrected me to say I am assuming. Remember?

**CHAIRPERSON:** Yes, yes.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** But my problem is, if you had said there  
10 was approval and you did not say they said so and the  
investigators left it at that and then you now say you know,  
during the interview I said there was approval and the  
issue was not taken further but actually I have reflected,  
there was no approval that I am sure about, I assumed  
because of the following facts that were known to me.  
That would be different but here they take the trouble, that  
is the investigators, to give you a chance to reflect whether  
you want to say to them you are sure about what you are  
saying or to say look, I am not sure. They say are you  
20 hundred percent sure, categorically? You say yes, I am  
saying so. So what I am putting to you, is it does not look  
like – it looks like you were very categorical here, you  
were not making an assumption.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** What do you say?



**MR TSOAMETSI:** Yes, Chair, I am saying – and I was trying to justify what is the categoric in terms of the investigators when I said yes, ask Kaizer and Gift because they went to the Minmec and Mintech and secondly, I just said, Chair, as I am even, when I am seated here, I do not have anything and I have not seen anything that says this is not approved but based on what you have said, Chair, it means I was wrong in being so categorical there.

**CHAIRPERSON:** Yes, but my concern is that you seem to  
10 have had every intention to say what you said. You were given a chance to reflect whether you really wanted to say they told you that there was approval. You were given a chance not one, not twice, more than that and you persisted in saying that is what you were saying. So why were you so categorical when you knew you were not sure about this?

**MR TSOAMETSI:** Well, Chair, I think it was more of an emphasis and like I am explaining now, what led to that categoric but I am prepared to concede to say yes, it must  
20 have been an assumption and not a categorical approval.

**CHAIRPERSON:** Mr Pretorius?

**ADV PRETORIUS SC:** Well, Mr Tsoametsi, do you accept now that the two versions cannot live together. You on the one version assume from the absence of certain facts and another letter that a certain attitude was taken by Minmec

or Mintech. On the other you say you were directly told. They cannot live together, do you not agree?

**MR TSOAMETSI:** I accept.

**ADV PRETORIUS SC:** Because you repeated at page 551, line 22. 551, line 23, in fact. It is actually line 22. In the context of the Mintech and the Minmec meetings, Mr Tsoametsi, you say – sorry, do you have it? 551, black numbers, line 22. But have you got page 551 there?

**MR TSOAMETSI:** Yes.

10 **ADV PRETORIUS SC:** Line 22, near the bottom of the page. Well, at the bottom of the page.

**MR TSOAMETSI:** I see line 20.

**ADV PRETORIUS SC:** So go two lines down.

**MR TSOAMETSI:** Okay.

**ADV PRETORIUS SC:** Mr Tsoametsi:

“They went, Gift and Kaizer, they went as people that are going to do that presentation for all these elements and then they came back to say there is no problem.”

20 **MR TSOAMETSI:** Yes, that is the same as the...

**ADV PRETORIUS SC:** As the earlier reference.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** But you say that is wrong?

**MR TSOAMETSI:** Yes, the fact that they went, yes. Correct, they went. The fact that there was categoric

approval, it was an assumption.

**ADV PRETORIUS SC:** Alright. In any event, the plan was then implemented. You say that at page 530, at the bottom of the page. What plan are you referring to there, is that your plan in the document of 25 November?

**MR TSOAMETSI:** The expenditure recovery plan and the document of [indistinct – dropping voice]

**ADV PRETORIUS SC:** But both those, as I understand your evidence, both those were prepared in order to ensure  
10 that money was spent and money was not taken away and they worked together in a way.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Correct. At page 531 – of course you left the department at some stage during this period.

**MR TSOAMETSI:** Yes, Chair. Because, Chair, there was – like I said, there was this restructuring. The two of us, me as the Director of Local Government Traditional Affairs, and my colleague who was the Director of Housing, we were both removed from our positions and we started  
20 working with the two HODs, that is as support waiting to be placed because of the reconfigurations and in December I then received my letter to say you are transferred to Agriculture and that is the time when I was to be transferred to Agriculture.

**ADV PRETORIUS SC:** Right. So you did not stay through

to March 2011 in the Department of Human Settlements. I am just wanting to explain to the Chair why your evidence in relation to the events ends there.

**MR TSOAMETSI:** Then, Chair, upon receiving this letter to say go to Agriculture, the position that was said I should go to, there was already a person in that position so I had issue with how do you take me to a department where there is a person already in the position and expect me to go and remove the person and occupy his position? So effectively  
10 I was then allowed to say okay, wait, we will then revert back to you and that is the period. So that is basically what had happened to me.

**ADV PRETORIUS SC:** Yes, you say that on page 531, you say:

“Yes, where I now moved to Agriculture.”

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** But in that context you say:

“Five of my colleagues get to be fired.”

And you asked the question why not you as well?

20 **MR TSOAMETSI:** Okay.

**ADV PRETORIUS SC:** And in fact you said that in the inquiry.

**MR TSOAMETSI:** Chair, now I am in the Department of Agriculture, that is 2011, 2012, I think. A new MEC and a new HOD come in, in Human Settlements, it is no longer

Tata Zwane. I think he also – there was a reshuffling in the province around about March, February – February, March, I think somewhere around there where he was also now moved to Agriculture. The HOD for Human Settlements moved to the municipality. Now there is this disciplinary hearing with our remaining colleagues and I am required to come and give evidence, to give exactly what I am giving now, in the disciplinary hearing and my take was, why am I on the other side when what these people  
10 are being charged with, I was central working with them to make sure that we achieve this. So yes, indeed, that is what I put in the records at the disciplinary hearing and that is what I have repeated with the investigators.

**ADV PRETORIUS SC:** Can you give any explanation why the five relatively junior officials were targeted or disciplined or not others?

**MR TSOAMETSI:** I will not have raised it in the disciplinary hearing and if I knew, a perception by doing that has now been created that we were the protected one  
20 and they are now the goats that must be slaughtered. So that is the perception that has been created and that is – that is an albatross that we are living with.

But it is not nice when people that you have worked with, people that you were in one meeting up until the solution gets to be implemented, gets to be fired. On a

daily basis, on a weekly basis you meet them, they are getting in and out of hospital of stress to an extent that one of them ultimately succumbed and she passed on. It is not an environment that is conducive to still be saying you are an official, you are not charged, the rest are charged. So it is this perception, Chair, that we are carrying because look at what happened.

I moved, I go to Agriculture, the HOD moves, he goes to the municipality. Later, when there is changes in  
10 the political changes, the MEC moves to Agriculture together with the CFO. So anybody that is standing out there and looking at these things will come to that conclusion and I will not have an answer but that is why I had raised this issue in that meeting to say if this is a disciplinary hearing, I think I am sitting on the wrong table, I am supposed to be sitting with these people because I worked with them towards achieving the solution that they have implemented.

**CHAIRPERSON:** Who made the decision to remove you or  
20 transfer you from Human Settlements to Agriculture?

**MR TSOAMETSI:** My letter from – I sat in Local Government and Housing, I was reporting to Ralikontsane. So my letter was signed by Ralikontsane.

**CHAIRPERSON:** He was the HOD.

**MR TSOAMETSI:** He was the HOD at that time.

**CHAIRPERSON:** At the time.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** And, hang on, Mr Mokoena has left?

**MR TSOAMETSI:** No, no, no, Mr Mokoena was still the HOD – when I left, he was still the HOD for Human Settlements.

**CHAIRPERSON:** Yes but you were at Human Settlements which – you were at Department of Human Settlements which had come together with another department, is it  
10 not?

**MR TSOAMETSI:** No, sir.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Remember I had said ...[intervenes]

**CHAIRPERSON:** You were at Traditional Affairs, Free State.

**MR TSOAMETSI:** I was DDG Local Government and Traditional Affairs.

**CHAIRPERSON:** That is a separate department.

**MR TSOAMETSI:** No, within the department that was  
20 called Local Government and Housing.

**CHAIRPERSON:** Yes, okay.

**MR TSOAMETSI:** Then come the election.

**CHAIRPERSON:** Ja.

**MR TSOAMETSI:** Then government reconfigured itself.

**CHAIRPERSON:** Ja, ja.

**MR TSOAMETSI:** And in reconfiguring itself it created two new departments now, the Department of Local Government – or COGTA. Now it gets called COGTA and the other one gets to be called Human Settlements.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** So HOD, Ralikontsane was the HOD under COGTA.

**CHAIRPERSON:** COGTA, yes.

**MR TSOAMETSI:** And I was the DDG under COGTA.

10 **CHAIRPERSON:** Oh, okay. So as at the last few months of 2010 you were taking – when you were taking part in the meetings that we talked about...

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** You were not at Human Settlements.

**MR TSOAMETSI:** No, not at all.

**CHAIRPERSON:** You were in a separate department.

**MR TSOAMETSI:** Yes, Chair.

**CHAIRPERSON:** You were just brought in for whatever reason.

20 **MR TSOAMETSI:** Yes, Chair.

**CHAIRPERSON:** Oh okay, okay, now I understand.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Okay. But, of course, what it means is that with regard to why you were not disciplined when others were disciplined, there is the distinction that they



were in a department which was not your department, you were in another department, whoever needed to – it would not have been the same person to take a decision to discipline those and to discipline you. It would have to be different people.

**MR TSOAMETSI:** Yes but I am still a public servant in the Provincial Government of the Free State.

**CHAIRPERSON:** Yes, I accept that, ja.

**MR TSOAMETSI:** Ja, so if there was discipline to be  
10 implemented, it will have just taken a letter from either the accounting officer or the MEC there to say in your department you have an official who participated in this thing and we are therefore requesting that he must form part of this discipline.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** The same way as they were able to send the letter requesting me to come and give evidence.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** They could have done exactly the same  
20 thing if they wanted to discipline me.

**CHAIRPERSON:** Yes but at least I think – I think at least what I did not know before, what I did not appreciate, I thought you were in a certain wing of the Human Settlements department whereas you have now clarified that you were in another standalone department but you

had been brought in to assist on a specific thing. So legally if somebody had to make a decision to discipline you, it would not have been somebody within the Human Settlement department, it would have had to be the HOD of COGTA. Okay.

**ADV PRETORIUS SC:** If you would go please to page 534 of FS13? There the investigators were discussing with you the implementation of the plan and I am referring to the 25 November document here and Mr Swanepoel asks you:

10            “In other words, you were going to or you were planning to pay companies that were not vendors of the department.”

As I understand it, what he was putting to you is that suppliers that you were going to pay as part of the execution of the plan were not on the database of the department.

**MR TSOAMETSI:** Yes, the point you are saying, Chair, was that these material suppliers that we are – you are now saying you are going to pay are not on the database of  
20 the department. And I said to him no, these material suppliers that we are paying, are material suppliers that have entered into an agreement with the contractors that we have legally – I am using that term now like I have been corrected to say you do not know whether the process followed, that have been legally given contracts. So we

are assisting those people because we have a legal relationship with them. So that is the point that I was that I was explaining to you.

**ADV PRETORIUS SC:** Yes.

**MR TSOAMETSI:** Not suppliers that we are sourcing with supply chain process.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Okay, I am sorry, Mr Pretorius, I just want to make sure my mind can move away from this  
10 previous question about inconsistency and discrimination in terms of discipline. So going back to that issue, so why is it that the Human Settlements Department invited you to their meeting to discuss the response to the National Minister, why were they bringing somebody from another department?

**MR TSOAMETSI:** Chair remember what I said exactly, with this reconfiguration the two DDG's, one for Local Government and one for Human Settlement, my colleagues from Human Settlement, we were removed from our  
20 positions as DDG's and I will call it, we were in a waiting room to be placed out of this new reconfiguration that was taking place, so HOD's will use us as and when there's issues that they need to be – to be attended to.

**CHAIRPERSON:** Oh.

**MR TSOAMETSI:** They will then use us, example Chair in

order to develop and to reconfigure these two departments I was very central, I played a very central role there, although it is a Corporate Savings function, but I played a very central role there working together with consultants that were appointed.

So it was that type of work ...[intervenes]

**CHAIRPERSON:** Oh, so just that you were available.

**MR TSOAMETSI:** Available then I get called.

**CHAIRPERSON:** Ja, and in a way you didn't have much  
10 work to do because ...[intervenes]

**MR TSOAMETSI:** Because I am in a waiting room.

**CHAIRPERSON:** Yes, okay, okay now I understand.

**ADV PRETORIUS SC:** Chair it is quarter past four, I would like with your leave to try and finish this witness, however long it takes.

**CHAIRPERSON:** I am quite happy to continue.

**ADV PRETORIUS SC:** I know the witness is from Bloemfontein but ...[intervenes]

**CHAIRPERSON:** Yes, Mr Tsoametsi you are fine if we  
20 continue to try and finish?

**MR TSOAMETSI:** I will appreciate that chair because I still have the responsibility of an audit that I must deal with at home.

**CHAIRPERSON:** Okay, alright.

**MR TSOAMETSI:** So I would appreciate ...[intervenes]

**CHAIRPERSON:** Your counsel they are fine with that?

**COUNSEL FOR MR TSOAMETSI:** Yes Chair, we are happy to ...[intervenes]

**CHAIRPERSON:** To try and finish.

**COUNSEL FOR MR TSOAMETSI:** Ja.

**ADV PRETORIUS SC:** There is a very polite and tentative ...[intervenes]

**COUNSEL FOR MR TSOAMETSI:** Ja, as long as we can just stay in the time that we need to be home before twelve  
10 tonight.

**ADV PRETORIUS SC:** We may start at 11.30 tomorrow so I have time to prepare for the next witness.

**CHAIRPERSON:** [laughing] okay.

**ADV PRETORIUS SC:** We can discuss that later.

**CHAIRPERSON:** Okay is tomorrow's witness represented by the same legal team?

**ADV PRETORIUS SC:** No.

**CHAIRPERSON:** Oh, okay, alright, oh you directed that to me.

20 **ADV PRETORIUS SC:** Yes, just a quick *pro quo*.

**CHAIRPERSON:** No that is alright, let us continue.

**ADV PRETORIUS SC:** The legalities of the direct payment to suppliers is a legal question and I really don't think it would help the Chair much if we debated that, and in fact you yourself say at the bottom ...[intervenes]

**CHAIRPERSON:** While I accept that Mr Pretorius I wanted to ask the question bearing in mind your understanding of the broadness of the mandate you were given why didn't you look into the question whether it would be lawful to make advance payments?

**MR TSOAMETSI:** Chair the only question that I had asked from the then legal aid was the one that I am talking about, whether will it be lawful to amend the contract and create an addenda that will allow contractors to be supported.

10 **CHAIRPERSON:** Yes, and what did he or she say?

**MR TSOAMETSI:** He said an addendum it will be allowed.

**CHAIRPERSON:** So he spoke to you on the basis that there were existing contracts that had already been concluded?

**MR TSOAMETSI:** Between the department and ...[intervenes]

**CHAIRPERSON:** The contractors.

**MR TSOAMETSI:** And contractors.

**CHAIRPERSON:** And that make you believe that therefore  
20 it ...[intervenes]

**MR TSOAMETSI:** It will be legal to support, to support contractors through this method.

**CHAIRPERSON:** Yes, now you see that question is important because my recollection is that both Mr Mokoena and Mr Maxatshwa said at the meeting that you have

referred to as the first meeting to discuss a response to the National Minister's concern they said Mr Zwane said he had a solution to the problem and the solution was advance payments and Mr Mokoena I think said his response was but this will be illegal MEC. I may be mistaken about Mr Maxatshwa but I think he said the same thing and they said Mr Zwane said he had talked to somebody who had said that this would be legal, but he did not want to disclose who that person is. Do you know  
10 anything, any discussion along these lines that happened at that meeting?

**MR TSOAMETSI:** No Chair except you will recall I said in that meeting, that is the meeting after Welkom, when we're reflecting on the discussions in Welkom.

**CHAIRPERSON:** Ja, oh, okay so that it was the first one.

**MR TSOAMETSI:** That is where the MEC said, based on those discussions in Welkom I think I had a solution that we must buy material and he has indeed you know a discussion to say is it legal, is it not legal, but the end  
20 result of the discussion was that I should go and do this, so it is those discussions that had taken place in those meetings.

**CHAIRPERSON:** Yes, you see for me, one, the fact that the mandate was as broad as it was, two, that the question of the legality of advance payment was raised at the

meeting meant that and should have been understood by you to mean that it was one of the issues you should look at, because obviously if this would be – would not be lawful, would not be legal it shouldn't be done. What do you say to that, in other words I expect that against the background of that discussion and that broad mandate you should have looked at the issue of whether this would be legal or not and your document should have addressed that issue.

- 10 **MR TSOAMETSI:** I hear you Chair, at the time when I am presenting this misinterpreted mandate to the Accounting Officer, and if it had gaps and there was still further clarity that is required on the legality there's two avenues that the accounting officers could have utilised, the first one is the head of legal, the second one is the Premier in the Premier's office, the legal, the provincial legal advisor, which is the avenues that are immediately available to an HOD and not to me, that he could have access to say look I have received those documents and it does not cover all
- 20 the issues that are needed to be covered, please advise me on the legalities, so yes it might mean that me coming out of that meeting I interpreted this according to all these things that I have done, but there were also other opportunities before signing to say look in my position let me take it to my – to the head of legal or even better take



it to the office of the Premier to the legal advice.

**CHAIRPERSON:** So you accept as fair the proposition that in the context in which you were – the mandate arose, it is fair to expect that you should have dealt with the question of whether it is legal – it was legal ...[intervenes]

**MR TSOAMETSI:** I accept Chair, I accept that.

**CHAIRPERSON:** Okay, alright, of course maybe for the sake of completeness I should say Mr Mokoena did say that when you brought your document to him he rejected it  
10 and still maintain that doing things between, making this advancement payment would be illegal, he says you went away and then he got a call from Mr Zwane who called him to his office and they had a discussion about whether this would be legal or not and he says Mr Zwane, I think he says Mr Zwane, I don't know whether it was earlier or not, but at some stage Mr Zwane said well if he – this was his plan if he did not want to implement it he should tender his resignation and he will be poor blah-blah-blah and ultimately he signed it.

20 **MR TSOAMETSI:** Chair I prepared a document for the HOD, I left the document for the HOD, so that the HOD will apply his mind, he will gazette it, he will sign it, at no stage Chair did I discuss that document directly with the political office.

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Because my protocol has always been, even if you are in the meeting with an MEC but your communication to the political head is through your administrative head, so it is another perception that is being created to say I call the MEC to create pressure on the HOD, I think that will be a – it is not correct.

**CHAIRPERSON:** Well I don't necessarily think that is what he meant, but what he did say is that you, the two of you, you and the HOD, had a discussion on the document  
10 when you brought it to him and he maintained that advance payments would be illegal. My recollection is that he said you went away with the document because he was not prepared to sign it and subsequently he got a call from the MEC, I don't think he necessarily says you spoke to the MEC or you didn't, maybe you did, but he simply says he was called by the MEC, they had a discussion and by the end of their meeting he signed.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** But in terms of your discussion with him  
20 ...[intervenes]

**MR TSOAMETSI:** We had the discussion and I left the document with him.

**CHAIRPERSON:** With him, did he raise any issue about the advance payments being illegal.

**MR TSOAMETSI:** No Chair, I gave him the document, he

said I will look into the document and I will come back to you.

**CHAIRPERSON:** Okay.

**MR TSOAMETSI:** And I left.

**CHAIRPERSON:** Okay.

**MR TSOAMETSI:** And he called me roundabout half past five in the afternoon to say the document, your document has been signed. As to what had transpired between him and ...[intervenes]

10 **CHAIRPERSON:** You don't know.

**MR TSOAMETSI:** I don't know Chair.

**CHAIRPERSON:** Okay, alright, Mr Pretorius?

**ADV PRETORIUS SC:** To be fair to you Mr Tsoametsi you weren't employed as a legal expert in the Free State Human Settlements Department, it wasn't your job to advise on the law and in fact at the direction of the Premier there is a legal advisor in the Premier's office whose specific purpose would be to have advised on this.

**MR TSOAMETSI:** To advise HOD's and MEC's.

20 **ADV PRETORIUS SC:** So if either the MEC or the HOD wished to have certainty that is the course that should have been followed, and as you say when you discussed the legalities of this issue with Mr Swanepoel at the bottom of page 534 that your mandate was to find out how to support contractors that are in need of support. I did not

think about the legalities, I gave it to the legal people, correct, and that's the reference to the amendment to the contract?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Am I correct?

**MR TSOAMETSI:** You are correct.

**ADV PRETORIUS SC:** And you repeat that at the bottom of page 536 when this debate continued as to whether it was legal or not to make advance payments, but let me put  
10 one practical issue to you because ...[intervenes]

**CHAIRPERSON:** Before you do that Mr Pretorius, you see Mr Tsoametsi part of my difficulty insofar as you may be saying, and I don't know if that is what you are saying, insofar as you may be saying you don't think you were expected to deal with the legalities, is that Mr Mokoena said, and I think Mr Maxatshwa said also the legality of advance payment was raised at the meeting at which you were asked, you were given the assignment. You also say in that meeting there were people who raised the issue of  
20 whether it would be legal, okay.

Now you were a legally qualified person in that meeting, you didn't belong to Human Settlements, you were brought in and you remember earlier on I was saying why were you brought in, and you were brought in, you see. It may be that I mean the fact is the document doesn't deal

with legalities, but as I have said you know Mr Mokoena said they raised the issue of the legalities and the MEC said somebody advised him that it was legal, they said it was illegal, somebody who is legally qualified is going to just prepare a document and doesn't address this question.

**MR TSOAMETSI:** Chair I hear you ...[intervenes]

**CHAIRPERSON:** Ja, so I just want you as you give answers to Mr Pretorius understand why I was asking the questions I asked.

10 **MR TSOAMETSI:** I hear you Chair but in a meeting like that where you have an HOD who was – who is supported legally by the head of Legal Service and the Premier's office, who deal with legal matters, and you have the CFO who is the custodian of the PFMA and its legality. When discussions are taking place and somebody says it is not in accordance with Supply Chain I assume Chair that the CFO will then take the responsibility to deal with issues of financial management. If the HOD had issues with Legal Service, the opportunity that availed it could have  
20 requested the head of legal or requested the office of the Premier to provide him with that. Yes myself I did not go to that level.

**CHAIRPERSON:** Was the head of legal part of the meeting?

**MR TSOAMETSI:** He was not, it was a meeting of the

Executive, the Chief Directors.

**CHAIRPERSON:** Yes, were you the only legally qualified person in that meeting?

**MR TSOAMETSI:** Matetwa was also a legal person Chair.

**CHAIRPERSON:** There were other legal people?

**MR TSOAMETSI:** Matetwa has a legal background, it was myself and I think we were the two that were of legal background.

**CHAIRPERSON:** Okay, no that's fine. Mr Pretorius?

10 **ADV PRETORIUS SC:** The Chair is absolutely right, there is another version, which may not be totally irreconcilable with your version, we will get there, and that version comes from Mr Mokoena and Mr Maqatshwa but I was going to deal with that later Chair towards the end.

**CHAIRPERSON:** That's fine.

**ADV PRETORIUS SC:** But it does seem that when the idea was raised its legality was discussed. I'm sorry?

**CHAIRPERSON:** I am sorry, is there a problem?

20 **MR TSOAMETSI:** No the phone is on Chair, I just want to switch it off.

**CHAIRPERSON:** Okay if you can switch it off.

**MR TSOAMETSI:** Sorry sir, sorry Chair.

**ADV PRETORIUS SC:** Mr Tsoametsi the different versions which have been highlighted now by the Chair I will put to you in due course, but it does seem that when the idea was

proposed after the Welkom meeting by the MEC that the legality of advance payments was indeed discussed, correct?

**MR TSOAMETSI:** Like I said discussions took place.

**ADV PRETORIUS SC:** Yes, you were then given a mandate.

**MR TSOAMETSI:** ...[Indistinct – not speaking into mic]

**ADV PRETORIUS SC:** Yes, as I understand your evidence at least, and we will look at the other evidence  
10 later you understood your investigation to be factual research into ...[intervenes]

**MR TSOAMETSI:** How to support.

**ADV PRETORIUS SC:** How to support and what had been done before, right, and as you say at the bottom of page 536 you didn't think about it from a legal point of view, correct? So what we know from the outcome is that document that was signed on the 25<sup>th</sup> of November was not a legal opinion correct? And had they ...[intervenes]

**CHAIRPERSON:** I am sorry you have to say yes so that  
20 that's captured, ja, if you nod the answer is not captured.

**MR TSOAMETSI:** I say yes Chair.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** So despite the fact that in the presence of the MEC the legalities of advance payments had been raised, it seems that no legal opinion was

obtained, correct?

**MR TSOAMETSI**: Yes chair.

**ADV PRETORIUS SC**: As a matter of fact.

**MR TSOAMETSI**: Yes chair.

**ADV PRETORIUS SC**: Whether you should have done so or not you have dealt with the Chair on that?

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: And the further point that is important that had Mr Zwane or the HOD wanted a firm  
10 legal opinion on the legality of the scheme the advance payment scheme, there was the office of the Premier where Mr Venter was in charge where that opinion could have been properly researched and given.

**MR TSOAMETSI**: Yes Chair.

**ADV PRETORIUS SC**: Was it not a matter of concern to you that this was not done?

**MR TSOAMETSI**: No Chair because I was dealing with what was expected from me.

**CHAIRPERSON**: Can I just ask this, going back a little  
20 bit, this evidence by Mr Mokoena and Mr Maxatshwa if I recall correctly that Mr Zwane when the issue of the legality of advance payment was raised at a meeting said he had been advised that it would be legal to do so but did not disclose who had advised him, is that something you remember as having happened at the meeting as well?



**MR TSOAMETSI:** I can't recall, I can't recall  
...[intervenes]

**CHAIRPERSON:** It might have happened it might not have  
happened.

**MR TSOAMETSI:** No I can't recall that.

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

**ADV PRETORIUS SC:** If you would go to page 539  
please, there are a number of issues that arose in your  
discussions with the interviewers. Mr Lambrechts at page  
10 539, line 4, asks:

“Did you pay the supplier before he supplied the  
material?”

Mr Tsoametsi: Yes if you are the supplier.”

It is the view of a number of witnesses that suppliers were  
paid before goods were supplied, correct?

**MR TSOAMETSI:** With this intervention of how are we  
supporting contractors, for as they are able to implement  
the expenditure recover plan. The idea was the contractor  
will approach his or her supplier, they will agree on the  
20 cost for material, they will also agree that the supplier will  
service the storage facility for the material. The two of  
them will come to the Department and request the  
Department to agree in supporting the agreement.

So what ultimately we were intending to do that  
Chair was now the suppliers, the contractors will no longer

have an issue of access to material. Secondly we would have mitigated the risk that material will have been delivered in own ...[indistinct – dropping voice], it will not be guarded or we needed now to incur another expense of employing a lot of security to guard, so by asking the material suppliers to be the warehouse or storage facility or what we call off-site delivery, it then allow for this tripartite agreement and like I said Chair that the advice that I received from the people that had implemented it is

10 that when we have done that it is important in order to mitigate the risk that you create that you create this monitoring capacity that will then be able to be the one that reconciles for you and produce the reports as and when the material goes out, verify it with the work done on the ground for us to be able to reconcile that.

**ADV PRETORIUS SC:** But as I understand it is that the scheme involved payment to the suppliers before the suppliers actually delivered the materials to the contract?

**MR TSOAMETSI:** Yes, because they were off-site storage

20 facilities.

**ADV PRETORIUS SC:** Well wherever they were in the meanwhile, but from a practical point of view, leave aside the legalities because we have dealt exhaustively with the original contract with the contractor, its relationship with the tripartite agreement and the validity of the cession

agreement, I don't really need to do that anymore, the contracts are there and they can be read and judged in their own right, but the ordinary contractual arrangement, practical arrangement on the ground, would be that you would have as a department a contract with the contractor.

The contractor would then have the responsibility to secure materials, you say yes.

**MR TSOAMETSI:** Yes, no I was still following before I respond, sorry Chair.

- 10 **ADV PRETORIUS SC:** The payment that would be made by the Department as the client would only be made once those materials had been delivered within the budget of the contractor and once those materials had been incorporated and the foundation, and that had been verified by the inspectors of the department.

The structure of that scheme has its own checks and balances for the sufficient expenditure of the Department, correct?

- 20 **MR TSOAMETSI:** Okay Chair like I have indicated that the problem statement that was analysing the state of housing delivery in the country, the fact that there is this capacity gap that was created by well established contractors pulling out from supporting government programmes and creating a vacuum or a gap that allowed emerging contractors to be the ones that are now

available, who will now have a problem of access to finance, a problem of access to material, and sometimes a problem of technical support.

So what Mr Pretorius is now saying is that under normal – had there not been any delay the normal practice would have been we have appointed contractors, they must go around, go to the banks, whether they go – they must go around and source the required finance that will enable them to buy material, do the work and claim for the work  
10 done, that is the normal conditions that is what will happen.

But in this abnormal what I call abnormal situation of wanting to turnaround delivery within this period of time this is what was then proposed Chair.

**ADV PRETORIUS SC:** You make the point fairly Mr Tsoametsi that this extraordinary scheme was developed not so much as to support emerging contractor but to make sure you spent the money in time, correct.

**MR TSOAMETSI:** No, no, it is not about money, it was  
20 about – remember this thing we were reacting to what has been raised by contractors, and contractors were there to deliver houses, so in supporting them as contractors an expenditure gets incurred, but in the main it was to support them so that we are able to implement our expenditure recovery plan, and the reason it is called an expenditure

recovery plan is because it entails money.

**CHAIRPERSON:** Well then Mr Tsoametsi I think you may have misunderstood Mr Pretorius. From your own evidence and from the evidence of I think every other witness who has testified maybe including Mr Zwane maybe I am mistaken about that. This was a reaction by the Human Settlements Department in the Free State to the National Minister's concern.

**MR TSOAMETSI:** There is no expenditure.

10 **CHAIRPERSON:** That the Provincial Department was not spending enough money that had been allocated.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** And even before there may have been a threat from the National Minister or the National Department everybody knew that if there was no plan that was satisfactory to the National Department as to how you would improve your performance money would be taken away from you.

**MR TSOAMETSI:** Yes Chair.

20 **CHAIRPERSON:** So – so this whole – all these activities – this whole thing was happening because you were seeking to make sure that the department in the Free State did not find itself having money taken away from it.

**MR TSOAMETSI:** Yes Chair.

**CHAIRPERSON:** But in the process of wanting to achieve

that you then sought to assist contractors.

**MR TSOAMETSI:** Yes Chair and not only that I – I...

**CHAIRPERSON:** In other words the assistance of the contractors.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** Was secondary. The major thing was to improve the expenditure.

**MR TSOAMETSI:** I hear you Chair. But the impact of that solution is that we were then able to continue to deliver on  
10 the promises that we had made around houses. Chair I do not know as to whether the commission that looked into the annual reports of the department.

**CHAIRPERSON:** Well I have not looked at the annual reports but I am just concerned about the proposition your response to the proposition that Mr Pretorius put to you.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** That you seemed to dispute and I did not expect you to dispute and I want to make sure that we are all on the same page.

20 **MR TSOAMETSI:** yes.

**CHAIRPERSON:** As I understood the proposition he meant to say the – there was a recovery plan.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** That was a response – the Provincial Department's response to the concern of the National

Minister.

**MR TSOAMETSI:** Yes.

**CHAIRPERSON:** And this recovery plan for it to work it became necessary to assist contractors because otherwise they would not come on board.

**MR TSOAMETSI:** Yes Chair.

**CHAIRPERSON:** But the primary thing was responding to the National Minister's concern.

**MR TSOAMETSI:** Yes Chair.

10 **CHAIRPERSON:** Is that right?

**MR TSOAMETSI:** Yes Chair

**CHAIRPERSON:** Okay. I think we are on the same page now.

**MR TSOAMETSI:** And I was just saying Chair I know that we are not dealing with the impact here it might be something that – but when you look into the – the annual reports of the department and you look under the performance of 2010/2011 which is reported – which is recorded as 5216 units completed.

20 But when you go to the next financial year and it is also recorded in the annual report it then shoot up to 9070 and when they indicate why there is this high volume they then say it is in completion of the backlog of 2010. So yes there are these houses that have been – the support that we have given to but it has produced.

It has assisted the Province to produce on the ground that is number 1 Chair.

2. It will be very important to check with the same contractors that were assisted whether by doing these things have we been able to meet – remember that diagnosis I have talked about Chair. Have we been able to assist them to then start to be financially better by providing them with material without having to go through?

So what I am saying Chair is that the – the product in  
10 terms of units that have been produced during that financial year which are contained in the annual report of that financial year indicate that on the ground there is complete – completeness.

**CHAIRPERSON:** Well the HOD of the Department the one who followed Mr Mokoena says that arising out of how the department responded to the National Minister's concern there is more than R500 million or R600 million that is unaccounted for. You might not be able to say anything but I just – I just want you to know that as you look at what you  
20 say may have been benefits.

**MR TSOAMETSI:** Yes. That is in...

**CHAIRPERSON:** That is – ja.

**MR TSOAMETSI:** I concede Chair that is why I am saying when you develop a solution you will always have to take an assessment identify the gaps, identify opportunities then



going forward then be able to say is this thing something that can work and can it be improved? Now just more than that I am talking about Chair.

In preparing to – to come here I again went back and say maybe there was something wrong are there other provinces now that are doing exactly that – this thing of supporting contractors?

I then discovered again that in the Western Cape partnership between ABSA, material suppliers, government  
10 and an NGO has been established to make sure that there is capacity and support to contractors so that they are able to deliver. So there is this thinking in the country to say sub-contractors needs to be supported. How it is being done  
[Chair speaking over witness].

**CHAIRPERSON:** I think the principle cannot be wrong. It is how you do it.

**MR TSOAMETSI:** That is what I am saying Chair yes.

**CHAIRPERSON:** You have got to do it in a lawful way.

**MR TSOAMETSI:** Yes Chair.

20 **CHAIRPERSON:** Mr Pretorius.

**ADV PRETORIUS SC:** If you would go please for the moment to FS17 I want to deal with a few things that you said in the disciplinary inquiry. This is the transcript of the disciplinary proceedings.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** FS17 – 777.

**MR TSOAMETSI:** Yes Sir.

**ADV PRETORIUS SC:** We know there was a data base. We know you may not know but the data base was composed of various categories of persons including those who had bid for the tender in 2010. I understand that you do not have direct knowledge of that. But what happened was that from a large data base it appears that a selection of 106 contractors was made. Do you remember that?

10 **MR TSOAMETSI:** That is why when you refer to the ERP Chair we are calling it the 106.

**ADV PRETORIUS SC:** Yes right.

**MR TSOAMETSI:** Because it – yes.

**ADV PRETORIUS SC:** So – and not only was the selection made – the houses were allocated to those contractors. Some were allocated 500; some were allocated 300 and the like. Who made that allocation?

**MR TSOAMETSI:** I would not know but the principle Chair is the MEC has the responsibility to provide leadership,  
20 direction and oversight in a department. Now direction in Human Settlement means there will be a plan and this plan will say in this year these are things that we are going to do and we are going to do them in the following municipalities and towns.

And based on the situational analysis that will have

been done it will say because these are the hotspots we will allocate more houses in those areas. So that is the leadership and direction that will come from a MEC. The HOD will then provide the administrative implementation which under normal – normal circumstances will then be to go into the data base, develop a data base.

Give proposal based on the functionality of different contractors to say based on their functionality this is what we are recommending. Discuss it with the MEC then it gets  
10 to be an approved list of contractors allocated to the projects in different towns where there have been identified. That is how I understand it Chair.

**ADV PRETORIUS SC:** Well look please at page FS17, 777.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** At the disciplinary inquiry you said:

“What normally happens in the department is that the MEC will make allocations and then after making allocation there will be appointment letters going to contractors.”

20 So they will receive these letters to say you are appointed please come and sign the contract, is that correct?

**MR TSOAMETSI:** Yes Chair that is the point that I was – the sequences that I was talking about that after that has happened – after the HOD has consulted with the MEC and

then there is this list that has been approved then that is the time people – those who are on that list will then be invited and then they will get their letters from the department. And then just become an administrative function.

**ADV PRETORIUS SC:** Because we know that list of 106 is signed by the MEC.

**MR TSOAMETSI:** Okay.

**ADV PRETORIUS SC:** He makes the allocations and then that is implemented with the HOD.

10 **MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Just one other matter before I get to the versions that need to be put to you; the Gauteng letter and one other matter. If you go to FS17 791 please.

**MR TSOAMETSI:** FS17 7?

**ADV PRETORIUS SC:** FS17 at page 791.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** You were explaining to the Chair of the disciplinary inquiry two issues.

20 1. That the contractor had to provide a guarantee, correct in the original contract?

**MR TSOAMETSI:** Chair the – the issue around providing guarantee from a policy point of view it is contained in the policy to say that that is the ultimate where I think we want to go as a sector. That contractors will provide guarantees. But the practice taking into account the conditions that are

prevalent in terms of the contractors that have been getting – it has always been difficult and I think the department has been lenient on the issue of guarantees. But when you read – when you read the policy you will come across such an intention to say guarantees needs to be – be provided.

**CHAIRPERSON:** But is – does the policy make the provision of a guarantee a requirement or does the policy say in the future we will have to look at requiring contractors to provide guarantees? In other words to the extent that in practice the  
10 department may not have been insisting on guarantees was it going against an existing requirement or was the fact that there was no existing requirement for the provision of guarantees but there was an indication in the policy that at some stage in the future this may have to be made a requirement?

**MR TSOAMETSI:** I think it was an indication Chair it was not a requirement.

**CHAIRPERSON:** Okay.

**MR TSOAMETSI:** That is our understanding.

20 **CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** In any event the contract provided a guarantee requirement. And the contracts also provided for a retention. In other words that the department would retain certain of the contract price until it was satisfied that the building was in accordance with the contract. Both those

issues firstly the guarantee but especially the retention were reduced in your version abolished on other versions or not enforced on other versions. The result is well

1. To help contractors but
2. To speed up expenditure.

Because the money would then be spent and not retained.

**MR TSOAMETSI**: You know Chair I – like I explained. The – that even if it was in the contract there must have been a discussion that says contractors are not in a position to  
10 comply with a guarantee and therefore the department did not implement that. But I am not certain Chair I am not able to give an immediate...

**ADV PRETORIUS SC**: You do not know.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: But I am just raising those two together because you raised them together in the disciplinary inquiry.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: The point I think – a more important  
20 point is that there was a retention amount that was kept by the department. In other words not spent but the department decided it would spend and – and hand that over to the contractor before the retention period expired. Were you aware of that?

**MR TSOAMETSI**: Well I cannot comment on that – on the

daily – but if that has been achieved as a fact Chair I accept it.

**ADV PRETORIUS SC:** Alright you do not – fine that is okay. I would just like to put to you briefly Mr Mokoena’s version and Mr Maxatshwa’s version in relation to certain issues. Mr Mokoena says that at a stage Mr Zwane called a meeting to say he had a solution or proposal in relation to the unspent monies. The monies that had to be spent. Now it may not be so irreconcilable with your version except to say that you  
10 say that that meeting occurred after the Welkom meeting, correct?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Mr Zwane made the proposal.

**MR TSOAMETSI:** Correct.

**ADV PRETORIUS SC:** You say the legality was discussed.

**MR TSOAMETSI:** The implementation of the document yes and other people raised issues of legality in the meeting.

**ADV PRETORIUS SC:** Yes. Did Mr Mokoena have an issue with the legality? He says he did.

20 **MR TSOAMETSI:** I think – like I said I think he spoke – ja he spoke on the issue of the legality in the meeting. It is one – like I said there were many [00:18:20] so yes he is one of those that spoke on the issue of legality.

**ADV PRETORIUS SC:** Alright. He says after the meeting – well Mr Zwane is reported by Mr Mokoena as having said

that you were mandated to research the legitimacy or the legality of the plan. That differs from your evidence.

**MR TSOAMETSI**: No not – from what you are saying it is like outside then outside that meeting the MEC mandated me. I am saying in the meeting out of the discussion the absolution of the meeting was that I should – yes.

**ADV PRETORIUS SC**: Do factual research?

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: You did not understand your mandate  
10 there to be...

**MR TSOAMETSI**: To do legal.

**ADV PRETORIUS SC**: To research the legality.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: Well Mr Mokoena's version is that that was indeed your duty.

**MR TSOAMETSI**: I did not understand it that way.

**ADV PRETORIUS SC**: Alright.

**CHAIRPERSON**: You said Mr – you conceded that Mr Mokoena raised the issue of the legality on advance  
20 payment. Do you remember whether he raised it in the sense of expressing a view that there was no problem with the legality or did he raise it with a view to say it was illegal or he doubted that it was legal.

**MR TSOAMETSI**: No he raised with the view that the legalities needs to be looked into.



**CHAIRPERSON:** Okay alright.

**MR TSOAMETSI:** No, not...

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** Yes. I mean Chair when – when an issue gets raised in a meeting.

**CHAIRPERSON:** Yes, yes.

**MR TSOAMETSI:** Different views, different – or somebody will come and say the financial sustainability needs to be ...

**CHAIRPERSON:** Looked into.

10 **MR TSOAMETSI:** Somebody will come – the risk needs to be looked.

**CHAIRPERSON:** Ja.

**MR TSOAMETSI:** So in that spirit.

**CHAIRPERSON:** Okay.

**MR TSOAMETSI:** It was raised.

**CHAIRPERSON:** Okay.

20 **ADV PRETORIUS SC:** Mr Mokoena also gave evidence of a meeting he held personally with Mr Zwane alone after perhaps this meeting or another meeting. You were not privy to that discussion?

**MR TSOAMETSI:** No Chair.

**ADV PRETORIUS SC:** Were you at a meeting with the Minister in February 2011?

**MR TSOAMETSI:** During this transition Chair like I said me fighting while going to – I am not so sure whether was I part

of a meeting but it is something that we can check. I cannot recall that.

**ADV PRETORIUS SC:** Well let us just go to the reference it is in FS12 page 348.

**MR TSOAMETSI:** Sorry you said FS12?

**ADV PRETORIUS SC:** Page 348. This is the affidavit of Mr Mokoena. He says in paragraph 27:

“During February 2011 the MEC of Human Settlements Mr Zwane, myself our new CFO Ms Debbie Hattingh and if I  
10 recall correctly Mr Mmuso Tsoametsi attended a meeting called by the Minister, Mr Sexwale and the Director General of Human Settlements Mr Thabane Zulu who explained why we made the advance payments. Did you attend that meeting?

**MR TSOAMETSI:** That is the meeting that I am saying I cannot recall attending a meeting with the Minister. I do not have that recollection.

**ADV PRETORIUS SC:** Alright.

**MR TSOAMETSI:** May I put it?

20 **ADV PRETORIUS SC:** Ja you can put it away. Is it correct you may have attended that meeting but you would not then recollect what happened?

**MR TSOAMETSI:** I do not recollect Chair but it is just such an important occasion to sit in a meeting with the Minister that – I find it strange for me to forget.

**ADV PRETORIUS SC:** Right. In relation to the meeting at which the advance payment scheme or system was discussed Mr Maxatshwa gives evidence or has given evidence and he also said that Mr Zwane called a meeting saying he had come up with a plan for dealing with the unspent monies. That is the way he put it. Whether he came up with a solution or came up with a plan or came up with a proposal if this meeting took place after the Welkom meeting it would be more or less consistent with your  
10 evidence. Correct?

**MR TSOAMETSI:** That is correct. That is correct.

**ADV PRETORIUS SC:** However one might describe the fact that Mr Zwane made a proposal. We know that he had the proposal. Correct.

**MR TSOAMETSI:** That is correct.

**ADV PRETORIUS SC:** Mr Maxatshwa says the opinion of that meeting was that the payment scheme would be illegal. What do you say about that? I think you would disagree?

**MR TSOAMETSI:** I am not so sure...

20 **CHAIRPERSON:** He might say he does not know.

**MR TSOAMETSI:** I am not so sure what to say. I do not know what to say.

**CHAIRPERSON:** You were not at the meeting?

**MR TSOAMETSI:** No, no that is the meeting that I said ...

**CHAIRPERSON:** Oh you say you do not remember whether

you attended it or not.

**MR TSOAMETSI:** Yes that this – the whole meeting concluded – I do not remember such a decision on the meeting.

**ADV PRETORIUS SC:** Yes well he did say that at that meeting Mr Zwane answered objections to the lawfulness of the plan.

**MR TSOAMETSI:** In the discussion yes.

**ADV PRETORIUS SC:** Yes by saying that he had been  
10 advised of the lawfulness of the plan which had been used in  
other provinces. Now that would be consistent with the  
evidence that the Gauteng example had been raised at the  
Welkom meeting.

**MR TSOAMETSI:** No at that time Chair when I was asked to  
do research nobody had known – nobody knew about this  
Gauteng because I had to come up with – after doing my  
desktop. So it is impossible in that meeting what was raised  
was that in the previous financial year advance were paid  
through [00:26:00]. That is the only thing that was – not  
20 Gauteng.

**CHAIRPERSON:** To the extent that Mr Zwane may have said  
that he had been advised that advance payments would be  
lawful, would be legal is there a chance that you might have  
been the one who advised him like that or is there no  
chance?

**MR TSOAMETSI:** Not at all Chair.

**CHAIRPERSON:** Okay alright.

**MR TSOAMETSI:** Not at all.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Then Mr Zwane who is still to be questioned in this regard Mr Tsoametsi put a version up in his affidavit – in his affidavit he said:

10            “In as far as the incident of funds advanced to the suppliers to deliver materials to the contractors without the contractors paying for them with the department tendering the payment thereof a legal opinion was sought in this regard and the legal department of the Provincial Human Settlements had advised positively to this effect and proceeded to draft the agreements between the suppliers and the department.”

What do you say about that?

20            **MR TSOAMETSI:** The legal opinion of the Department will be the Head of Legal in the department.

**ADV PRETORIUS SC:** Well that is what he says. What do you say about that?

**MR TSOAMETSI:** I will not know Chair whether he had a discussion with the Head of Legal. I will not know about that.

**ADV PRETORIUS SC:** Yes well I think he clarified that in his testimony on the 25 September, Friday last week and he said there that well really he was talking about your document. He was not really talking about a formal legal opinion but the document you provided.

**MR TSOAMETSI:** So he...

**ADV PRETORIUS SC:** Your 25 September.

**MR TSOAMETSI:** So you regarded my document as a legal opinion?

10 **CHAIRPERSON:** Ja that is what he said. He said when he says legal opinion he is referring to your document.

**MR TSOAMETSI:** I will not know why would he say that I mean.

**ADV PRETORIUS SC:** The one thing is clear from your evidence is that it was not a legal opinion.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** Then you have explained – I had versions to deal with in regard to the response to what was said at MINTECH and MINMEC those meetings of November  
20 2011. Maxatshwa said he reported back to Mokoena and the purpose of that was so that Mokoena could relay the criticisms of the scheme and the advice that it was unlawful to yourself and to Mr Zwane. Did Mr Mokoena ever do that?

**MR TSOAMETSI:** Not to myself Chair. I do not – like I had said initially I will now be knowing that there is – not to

myself.

**ADV PRETORIUS SC:** Alright. Mr Zwane's evidence was that the HOD reported back to him after the MINMEC meeting that certain adjustments had to be made to the expenditure recovery plan. Did you ever come to know of that?

**MR TSOAMETSI:** I would not know the outcome of discussions between the MEC and the HOD Chair.

**ADV PRETORIUS SC:** In any event we know and do you  
10 know that ultimately the Minister – National Minister said these advance payments must stop.

**MR TSOAMETSI:** No, Chair.

**ADV PRETORIUS SC:** That never happened or you do not know?

**MR TSOAMETSI:** No, I know that in... is it January or so?

**ADV PRETORIUS SC:** February 2011 and I... that is the meeting I referred to.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** And asked you whether you attended  
20 it or not.

**MR TSOAMETSI:** Oh, is it February? Oh, I think by that I was already gone. You see Chair, that period of that that land(?) and me fighting where I am going and what is it that I am going to do. I was no longer as active.

**ADV PRETORIUS SC:** Okay. Something else that Mr

Mokoena said, before signing the document of the 25<sup>th</sup> of November, “your document”, that he took issue with the legality of the proposal in the document. Mr Mokoena says that you then went to the MEC and the MEC then summonsed Mr Mokoena to ask why he was refusing to sign the document. Do you recall anything of that?

**MR TSOAMETSI:** Like I have already said to the Chair that what I recall is that, yes I have prepared a document and I gave it to the HOD and he said: I will revert back to you.

10 **ADV PRETORIUS SC:** And later that afternoon he called me. At no stage, did I discuss that same document with the MEC.

**ADV PRETORIUS SC:** You referred to a letter that we should put to you and unfortunately it was not put to Mr Mokoena and if necessary, that can be done. It appears at FS12-252. Is this the letter you were referring to from the HOD to Mr Thembani Zulu of the National Department?

**MR TSOAMETSI:** FS... 252...?

**ADV PRETORIUS SC:** 252.

**MR TSOAMETSI:** Yes, I am on it.

20 **ADV PRETORIUS SC:** You raised a letter... the issue of a letter between the Provincial Department and the National Department. Is this the letter?

**MR TSOAMETSI:** Yes, Chair.

**ADV PRETORIUS SC:** What point do you make on this letter in regard to this letter? We had not put it to Mr



Mokoena and might have to do so.

**MR TSOAMETSI:** Yes, Chair I have raised this letter in the context of approval from National. Now I am saying, in the first paragraph of the letter, it raises a disappointment. Now if it raises a disappointed, it means there was a stage where there was a meeting of mind. It says:

10                    “I am disappointed that I learnt from the media this morning of your announcement in Pretoria yesterday regarding the possible forfeiture of conditional grants, funding at the Free State of Department of Human Settlements due to an inadequate expenditure and performance.”

And it goes into to explain the issues that the department embarked on the ERT in November 2010 which saw the establishment of the executive high level and operational intervention teams.

And somewhere Chair it talks about... or I think it is point number 4 that:

20                    “During a meeting held with representatives from National Department in November 2010, we committed to report on our expenditure to the National Department on a fortnight basis.”

Now we report on what has been agreed upon and accepted. And that is the point that I was saying, my assumption was coming from that when I looked into these

things like there was an approval but I might be wrong in my interpretation.

**ADV PRETORIUS SC:** Well, let me put to you what happened. At the meeting of the 18<sup>th</sup> of November, the MINTECH meeting it was said in very clear terms to the departmental persons who attended that this expenditure recovery plan is not going to work. That is the evidence and it is backed up by the minutes and I can show you the minutes if you like.

10 **MR TSOAMETSI:** [No audible reply]

**ADV PRETORIUS SC:** At the... that was noted at the meeting the next day the MINMEC, the Ministers' meeting. And it was reaffirmed there that monies would be deducted where necessary from the budget or not paid over.

The evidence has been that notwithstanding that, Mr Zwane insisted that the programme go ahead. What happened then was that the National Department stopped paying the money, R 256 million because they were not happy that the expenditure recovery programme would work.

20 Consistent with the approach taken on the 18<sup>th</sup> and the 19<sup>th</sup> of November and inconsistent with the approach in the department by Mr Zwane when Mr Zwane's leadership that the expenditure recovery plan should continue.

Those are the facts as we have them, backed up by the minutes. So it was not as if there was a change of mind on

the part of National. National's position was consistent throughout.

**MR TSOAMETSI**: I hear you Chair but the only point that I am not able to understand is. When you say your... the view is that your plan will not work, is that the disapproval? And when Mr Mokoena later tell ...[intervenes]

**CHAIRPERSON**: Of course it is a disapproval. Because you cannot approve a plan that you think will not work, can you?

10 **MR TSOAMETSI**: Chair, when you present. Remember, the instructions. You must come and present to National.

**CHAIRPERSON**: H'm.

**MR TSOAMETSI**: Your plan.

**CHAIRPERSON**: H'm.

**MR TSOAMETSI**: So normally is that National will evaluate the plan and it will confirm to say, your plan is not approved.

**CHAIRPERSON**: H'm.

**MR TSOAMETSI**: Now the point that I am making is that, yes they are saying it will not work.

20 **CHAIRPERSON**: H'm.

**MR TSOAMETSI**: But on the other letter that is from the HOD to the Director General, it says, we are committed to report on a quarterly basis.

**CHAIRPERSON**: H'm.

**MR TSOAMETSI**: So that for me what it says that, yes they

might have raised a concern that your plan is too ambitious and it will not work. However, give us your weekly... quarterly... weekly expenditures that will show whether you are meeting this plan as you have promised that you will meet.

**CHAIRPERSON**: H'm.

**MR TSOAMETSI**: Because later... later, I think that is when now the minister made the determination to say, even notwithstanding this, I am still now taking a portion of the  
10 money away from the province.

**CHAIRPERSON**: H'm.

**ADV PRETORIUS SC**: Yes. Well, the consistent with the approach of the department which seems to have been accurate not only at the time but with retrospect.

The witnesses that have given evidence on the expenditure recovery plan but to one degree or another, all agreed that it was unrealistic and had no chance of being implemented in fact.

And so the representations in this letter would be  
20 subject to the same criticism. Do you agree?

**MR TSOAMETSI**: Probably realistic, yes. In the sense that, we had planned this thing within the period that is called the resting period because it is the period of December. But it would have made a big dent in the sense that work would have been on the ground. Completely no, but big progress

would have been achieved.

**CHAIRPERSON**: Well, that plan did not address the question of how the department would achieve the targets that were set out in the plan. It... the plan indicated that... indicated in fact to certain targets by certain ...[intervenes]

**MR TSOAMETSI**: Dates.

**CHAIRPERSON**: ...dates.

**MR TSOAMETSI**: Yes.

**CHAIRPERSON**: But my recollection and I have put this to  
10 some of the witnesses. I think, it could have been Mr Mokoena that if you look at the plan, it did not address how the department would achieve those.

And if the National Department looked at it, they were bound to raise that question to say: We can see your wishes. You wish to reach this target, that I get. But your plan does not tell us how you are going to get there.

**MR TSOAMETSI**: I hear you ...[intervenes]

**CHAIRPERSON**: Do you understand that?

**MR TSOAMETSI**: I hear you Chair.

20 **CHAIRPERSON**: H'm.

**MR TSOAMETSI**: But the fact that all of us, including officials in municipalities were on a daily basis getting reports, monitoring what is happening on site, both in terms of the level of whether it is foundation well-played or completion.

And condition those reports to say, this week so many foundations are complete. So many work plates are complete. No completion of the final structure.

We were able to have that information that being to show there is progress that is taking place on the ground.

**CHAIRPERSON**: Well, there may have been progress ...[intervenes]

**MR TSOAMETSI**: But it was not contained in the document.

**CHAIRPERSON**: The plan did not show how you would  
10 make that progress.

**MR TSOAMETSI**: I concede, Chair.

**CHAIRPERSON**: Ja, okay.

**ADV PRETORIUS SC**: And the comments of the Chair are consistent with the minute and that minute has been put in evidence.

**MR TSOAMETSI**: I see.

**ADV PRETORIUS SC**: Where the remark was made at the  
MINTECH meeting that the plan as presented has not  
demonstrate the ability of the province to spend the  
20 R 1.42 billion from now until the end of March 2011. And it  
turned out to be correct that that was no possible. Correct?

**MR TSOAMETSI**: Yes, Chair.

**ADV PRETORIUS SC**: You nod.

**MR TSOAMETSI**: Yes. I said yes.

**CHAIRPERSON**: Actually, it may be that to call it a plan.

[laughing] It is a wish list.

**ADV PRETORIUS SC:** There is one more issue that I have to deal with and that is the issue of Makwena Properties. You know that?

**MR TSOAMETSI:** Yes, yes.

**ADV PRETORIUS SC:** Yes, it is dealt with in the transcript.

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** It is at page 558 of FS13.

**MR TSOAMETSI:** F...?

10 **ADV PRETORIUS SC:** FS13, page 558.

**MR TSOAMETSI:** Yes, Chair.

**ADV PRETORIUS SC:** But will you tell the story, please to the Chair about Trans-Makwena and Makwena Property Developers? And once you have told the story, I will ask certain questions.

**MR TSOAMETSI:** Yes. Chair, I am now in the Department of Agriculture in late 2011 or so. And an opportunity presented itself that there is a contractor in the nearby town that is looking for people that can implement his project.

20 Now people that I was sitting with indicated to have an interest to approach this contract.

And I have indicated to them that: Look, I will also have an interest because I have a situation that I must get employment for my wife.

So if there is an opportunity of bidding for sub-

contracting, I will be more than willing to join your group and go and make such a presentation.

And it happened that the contractor that wanted to have somebody implement his Makwena Properties. And we approached him and we said, we would like to make a proposal to you on implementing your project.

We will bring together a pool of capacity with different knowledges and then implement your project. And that is how Makwena Properties was approached

10 **ADV PRETORIUS SC**: Alright. Just by way of background. At this time, you would have known that special measures have been put in place by the department in the Free State to assist contractors.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: Even to arrange for advanced payments.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: And with that knowledge, you went to one of the developers, Makwena Property Developers. One  
20 of the contractors, rather. And said: Let me build some of your houses. You have been allocated 500 houses. I want to build some of those houses. Correct?

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: In the... we know that Makwena Property Developers was granted a contract to build 500



houses.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: Could they do it?

**MR TSOAMETSI**: They had started Chair in building the houses. I think they have started with the foundations. And when we met him and we asked as to why do you want...? He then said: I have to focus. He had other projects in other districts.

And he said, travelling to Bloemfontein and coming to  
10 manage this project, it is actually a lot of his time and  
therefore I would like to focus on other projects that I have  
in the Eastern Free State.

**ADV PRETORIUS SC**: How many houses did he  
...[intervenes]

**CHAIRPERSON**: Well, the question was whether Makwena Properties could build 500 houses. In other words, did they have the capacity to your knowledge?

**MR TSOAMETSI**: I mean Chair if they had projects in Bloemfontein and in other... and they are running other  
20 projects, I think... I did not ask them about their capacity really.

**CHAIRPERSON**: Ja, okay.

**MR TSOAMETSI**: Because it was not an issue of: We do not have capacity. It was an issue: We are focussing somewhere else. And this project needs to be implemented.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** You agree with him then that you could build houses under his contract?

**MR TSOAMETSI:** Yes.

**ADV PRETORIUS SC:** How many houses?

**MR TSOAMETSI:** It was still the 500 project. There were some few foundations that were constructed Chair.

**ADV PRETORIUS SC:** How many did you end up building? How many houses did you end up building?

10 **MR TSOAMETSI:** When the... when Makwena Contract was ultimately... because like I said, because of performance. When we were ultimately it was terminated, on the ground we have 128 completion. We had 300 foundations. And we had material that we had bought that were onsite to the value of R 600 00,00.

**ADV PRETORIUS SC:** As I understand it, you informed the investigators on page 562 that you built around 20 to 30 houses.

**MR TSOAMETSI:** No, it is... Chair ...[intervenes]

20 **ADV PRETORIUS SC:** That is at page 572(?) ...[intervenes]

**MR TSOAMETSI:** I think it is at this stage that I need to reflect my discomfort. The Commission calls me. The Commission says: We are send by the Chair and the Chair is asking whether are you willing to help us to clarify certain things in...

I said: Why not. Anytime, I am prepared to tell what has happened. So I am going into a meeting with the Commission with that open mind.

In the Commission, the Commissioner... the representative says: When is the police coming to question you? Now, immediately it creates a discomfort.

I am here to talk to the Commission with the hope that I am assisting the Commission to achieve a particular objective.

10 Now when I am being asked when is the police coming to... it then changes the environment an... so when I was asked the question, I wanted...

I was trying to illustrate that on a week, we would be able to build 20 or so. Even before I completed that. So little.

Then I realised that look I have must have said something that I was not supposed to have said here and... so in that context, that is where the 20 comes from.

**ADV PRETORIUS SC:** Alright. How many houses were  
20 ultimately built is not the issues, certainly as far as we are concerned, this side of the room.

What is of concern, perhaps to the Chair, is that someone who is integrally involved in the development, then plan to help contractors in a way that is, to say the least extraordinary.

Its legality also seems to be a matter of much agreement. Maybe not total agreement. Then obtains the opportunity with his position and knowledge to construct houses and benefit from that scheme. Did you see any conflict of interest?

**MR TSOAMETSI**: Okay. Yes, Chair. This 500 project Chair did not receive the advance. So it did not benefit on the scheme that was... that we are talking about. The material that was bought there was bought by resources that we  
10 provided, not the resources from the scheme.

So when I was asked the question: Do you see a conflict of interest in sub-contracting to a contractor that has received the work from the state? I then said: No, I do not see a conflict of interest.

Because I raised two issues, Chair. The first issue was. The Free State's economy is 60% driven by government investment which simply means that almost everybody in the Free State is dependent on government resources one way or the other.

20 And therefore, if somebody has acquired a project with the state, I did not see it as a conflict of interest if I get to sub-contract with that particular person.

And in that context, that is why I raised the issue that I do not see the conflict of interest. I may be wrong Chair but that is...

Then the second issues that I raised Chair which I see... I see it as a big problem for the country very soon. And it is about the bottle neck of what we call middle class officials and their families being able to make an economic living in this context of the Free State being 60% of...

Where we are now, the position is, no government official must do business with state including their relatives.

Now if you take the Free State where the bulk of what you call middle class, are people that are employed either by  
10 municipalities or by state enterprises or provincial government or national departments that have offices in the province, and you take them to be a minimum of 500 000 and each one of them is responsible for three heads in there.

It means that in actual fact, out of the population of one of 2,8 million, already 1.5 million of that population is strapped into not being able to do business.

Now I am calling the middle class Chair because the bulk of people that are able to have like children going to school and coming back out of school and not being able to  
20 be absorbed by the state because the state can absorb everybody for a job, but the ones that are sitting in this category of unemployed youth with qualifications.

And if we interbreed this issue of not doing business with the state, in a broad interpretation, we are setting ourselves for a big problem.

Because very soon we are going to have a problem where this interpretation of you cannot do business. It simply means Chair, even... when my son applies for a job and the same committee comes, there are a few people that will be doing selection.

They will find it difficult to put their names on the short list because they will then say it is nepotism because their father is also in government.

Now he goes out. He is not able to do business with the state because if you do business with the state you must declare the tenders, the normal process.

Now he goes to the third leg, trying to do business with the private sector ...[intervenes]

**CHAIRPERSON:** Yes.

**MR TSOAMETSI:** ...which is having business with government and it is also a big problem. So I was raising this issue of conflict of interest of that context Chair.

**CHAIRPERSON:** Okay. Mr Pretorius.

**ADV PRETORIUS SC:** Well, we are not dealing here with a person who is employed by the state doing business generally with the state. That is a different question. It is been addressed politically and perhaps the Chair will have his own recommendations in this regard.

**MR TSOAMETSI:** Okay.

**ADV PRETORIUS SC:** We are dealing here with the

narrowing, a much narrower issue. We are dealing here with a person employed by a particular department dealing with a particular project doing business within that project.

**MR TSOAMETSI**: Yes.

**ADV PRETORIUS SC**: And let me just take that a little further. In your capacity Mr Tsoametsi as an official dealing with the contractual arrangements with contractors, it would be your duty to make sure that the principles that govern procurement and public expenditure of money are  
10 implemented.

**MR TSOAMETSI**: I agree.

**ADV PRETORIUS SC**: And that the public who are the benefit of the project, the department with the allocation of its funds and the contractors and suppliers are dealt with in accordance with a certain set of principles. Correct?

**MR TSOAMETSI**: I agree.

**ADV PRETORIUS SC**: The contractor may or may not have a public motive, public interest motive and want to do good and provide a service. But essentially it is there to make a  
20 living and to make a profit. Correct?

**MR TSOAMETSI**: Correct.

**ADV PRETORIUS SC**: That is where the conflict arises. That you were on both sides of the fence. You were on the one hand dealing with a certain sets of issues and on the other hand you were benefiting from those.

**MR TSOAMETSI:** [laughing]

**ADV PRETORIUS SC:** You were... that is the interests clash and the interest differ and you held interest on both sides of the fence.

**MR TSOAMETSI:** I do not think so Chair but I hear what Mr Pretorius is saying. At that stage of the appointment of selection of contractors, I was totally not involved. I was in a different department called Local Government and Traditional Affairs. When a department received a  
10 ministerial concern, yes, I did get involved. When the solution was implemented which I was party to, I was involved. When I had left that department and I am now in Agriculture and this opportunity availed itself, if this contract had received an advance payment, it will have meant that I have created a situation of an advance payment and I am now implementing it on this side and yes, in that situation I will have seen it will have been a conflict of interest but the facts in this matter is that yes, there was this contract that was allocated, it never had an  
20 advance payment, all the funds that were utilised is funds that we had to bring together to make sure that the process gets implemented. That is the ...[intervenes]

**ADV PRETORIUS SC:** Well, just one qualification to what you have said, we do not know the answers to those questions, the investigators have not established them but



if at the time you were creating a regime to assist contractors you were also contemplating going into business as a contractor, the conflict of interest would be more accentuated, you agree to that?

**MR TSOAMETSI:** Definitely, yes.

**ADV PRETORIUS SC:** Chair, subject to just looking behind me for a second? Those are the questions.

**CHAIRPERSON:** Any re-examination?

**COUNSEL FOR MR TSOAMETSI:** No, Chair.

10 **CHAIRPERSON:** No re-examination?

**COUNSEL FOR MR TSOAMETSI:** Ja. We are satisfied.

**CHAIRPERSON:** Thank you very much, Mr Tsoametsi, for coming to give evidence. If the Commission needs you again we will request you to come back but for now I am going to release you. Thank you to everybody for your cooperation, we have sat until quarter to six.

**ADV PRETORIUS SC:** Again.

**CHAIRPERSON:** Ja, again.

**MR TSOAMETSI:** Thank you for the opportunity, Chair.

20 **CHAIRPERSON:** Yes.

**MR TSOAMETSI:** For me to come here and share what had happened and I hope, Chair, I still hope that the government of today will be able to find an amicable solution and in dealing with the colleagues of ours. It is not nice for people to fight government but where there is

wrong, it must be dealt with but in this situation where the intention was to try and assist government to achieve - yes, it might have been irregular, yes, there might have been challenges but I hope that the government will be able to look into holistically what is it that has been achieved, what is the impact of that solution to the contractors, is there work on the ground and find it within themselves to amicably resolve the problem with my colleagues that are still battling and are still outside.

10 **CHAIRPERSON:** Yes.

**MR TSOAMETSI:** And secondly, Chair, yes, I was ...[intervenes]

**ADV PRETORIUS SC:** Sorry, just to interrupt you, you are talking about the persons who have been disciplined?

**MR TSOAMETSI:** Yes. And secondly, Chair, like you have indicated that where we have done wrong, I accept, Chair, that we might not have been vigilant enough and yes, we might have rushed the issues and for that I will like to take part of the responsibility as part of the team that came up  
20 with the solution and with all its weaknesses and shortcomings. Thank you, Chair.

**CHAIRPERSON:** No, thank you, Mr Tsoametsi, I think that is very important. As I said earlier on, I think that South Africans will be happy if they see more leaders and more senior managers who are prepared to look at what has

happened, look at the evidence and look at themselves and say did I do the right thing throughout, did I fall short and be able to say I can see where I fell short and for that I am taking responsibility, here is where I fell short and because those people can then be people who can take part in saying what is the solution because if you deny that you fell short, you will not see any need to come up with a solution. So that is quite important. We are going to adjourn. Tomorrow, Mr Pretorius, we are supposed to have

10 Mr Zwane and Mr Sodi, is that right?

**ADV PRETORIUS SC:** Yes, Chair. The former we have postponed, having discussed it with you.

**CHAIRPERSON:** Yes, I had hoped that we would – they would come here or at least the lawyers tomorrow so that we could postpone it to a specific date, postpone his evidence to a specific date. Maybe such arrangements can still be made.

**ADV PRETORIUS SC:** Yes, such arrangements can be made, Chair.

20 **CHAIRPERSON:** Yes, because I do have some days that we can look at.

**ADV PRETORIUS SC:** Sure.

**CHAIRPERSON:** Which are not too far away. I heard earlier on you wanted a deal about what time we start tomorrow.

**ADV PRETORIUS SC:** Well, I paid my price, Chair. Chair, it is just that I have to prepare.

**CHAIRPERSON:** No, no, that is fine.

**ADV PRETORIUS SC:** For Mr Sodi and I need to get some instructions in relation to the further investigations that have been done. I have not had a chance to do that.

**CHAIRPERSON:** Yes, what is your suggestion?

**ADV PRETORIUS SC:** 11.30, it will be brief, Chair, we will be finished by one.

10 **CHAIRPERSON:** 11.30?

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV PRETORIUS SC:** Thank you.

**CHAIRPERSON:** We will start at 11.30 then tomorrow and then we will be hearing Mr – well, one, we will formally postpone Mr Zwane's evidence to a specific date and then I will hear Mr Sodi's evidence for him to complete on the asbestos matter.

**ADV PRETORIUS SC:** Thank you, Chair.

20 **CHAIRPERSON:** Okay. Thank you, everybody, we will now adjourn. We adjourn.

**INQUIRY ADJOURNS TO 29 SEPTEMBER 2020**