

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

01 OCTOBER 2020

DAY 274



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 1 OCTOBER 2020

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV HOFMEYR: Good morning Chair.

CHAIRPERSON: Are we ready?

ADV HOFMEYR: We are indeed Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: If I may just indicate we have scheduled for today two witnesses. The first is Professor Mokgoro
10 who is currently the Premier of the North West Province and after him we will be receiving the evidence of Ms Mamela. Ms Mamela is a witness who is returning today she gave evidence originally in February. Professor Mokgoro has not given evidence previously.

I would just like if I may to locate Professor Mokgoro's evidence because it has been some time since we actually have received evidence in relation to the matters that we will be traversing with Professor Mokgoro today.

20 Chair you may recall back in the middle of 2018 in fact it was – sorry 2019 it was we received evidence in a session of the first aviation evidence about a contract that had been entered into between South African Express Airways and the North West Government and it related to certain routes that were going to be established between

Cape Town and Johannesburg airports and then the Mafikeng and Pilanesberg airports.

And we received evidence Ms Babadi Tlatsana who was one of the directors of a company Koroneka that had been appointed to as a management company in relation to these air services that were going to be provided to the North West Province.

We also received the evidence Ms Phatudi who was the CFO at the relevant time in the Department of
10 Community, Safety and Transport Development and in the course of her evidence she made reference to the fact that the first payment that was made from the North West Government to South African Express Airways was a payment in the amount of R50 million and that had been authorised out of the Premier's office by the then acting Director General and that was at the time Professor Mokgoro.

So Professor Mokgoro provided us with a sworn statement in response to Ms Phatudi's evidence and
20 subsequent to that a determination was made that it would be useful to have him appear today he gave an undertaking and an offer at the end of his sworn statement to be available to the commission.

And so we have taken him up on that offer and today we will be questioning him about matters related to

that payment. Thank you Chair.

CHAIRPERSON: No thank you.

ADV HOFMEYR: Chair if I may just ask for the lawyers for Prof Mokgoro to place themselves on record.

CHAIRPERSON: To place themselves on record yes. They can do from where they are.

ADV MOKOTE: Yes. Thank you very much Chairperson I am Mogera Mokote Advocate. With me I have my attorney Mr Mahlangu Nhlanhla, my pupil Ms Dipalisa Dukele and on
10 this ride she is not a legal representative but is a
[00:03:21] spokesperson Mr Vuyiso Lengese. Thank you very much.

CHAIRPERSON: Thank you. Thank you. Okay please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

PROF MOKGORO: My name is Tebogo Job Mokgoro.

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

PROF MOKGORO: Not at all.

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

PROF MOKGORO: Certainly, 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.

PROF MOKGORO: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you very much; you may be seated
Mr Premier.

PROF MOKGORO: Thank you.

ADV HOFMEYR: Chair just in relation to logistics for today
Professor Mokgoro's two sworn statements have been
placed in a file that we have numbered DD32. I
10 understand that we are entering them now for the purposes
of a file number and then if I can just indicate what is
contained in that file and Professor Mokgoro you should
have a copy in front of you.

PROF MOKGORO: What is the number?

ADV HOFMEYR: It is – on the spine it is DD32. That is
just the name of the file. But I – when I need to refer you
to a particular page I will refer to the page number in the
top right hand corner. Chair the file comprises the first
sworn statement of Professor Mokgoro. That is a
20 statement which was deposed to on the 22 July 2019. It is
followed by the annexures to that first sworn statement and
you find that under Tab 2 in the file. Then under Tab 3 was
the second sworn statement deposed to on the 17
September 2019 and its annexures. Just so that we can
understand what had happened was Professor Mokgoro

provided his first sworn statement – there were certain documents that were missing from it. We requested that they be provided.

The second sworn statement purports to provide them but as I will deal with in Ms – in Professor Mokgoro's evidence there are actually still some documents outstanding but we will address that in the course of the evidence.

And then the last document in the file is simply a
10 copy of the speech that the then Premier of the North West gave in the first session of Fifth Legislature in June 2014. That is a document that I will make reference to in the course of the evidence. And so those are the documents which comprise file DD32.

If we may just enter the file name into the record and then I will make reference to the specific documents when we go to them if I may?

CHAIRPERSON: Should we say it is Bundle DD32 and then various documents...

20 **ADV HOFMEYR:** Indeed.

CHAIRPERSON: Will be Exhibit something.

ADV HOFMEYR: Indeed.

CHAIRPERSON: So that – so we will say it is Bundle DD32.

ADV HOFMEYR: Correct Chair thank you.

CHAIRPERSON: I am just changing here.

ADV HOFMEYR: Right.

CHAIRPERSON: On the spine. Bundle DD32 yes. And then with regard to the specific documents you will ask me to admit them as and when...

ADV HOFMEYR: Indeed.

CHAIRPERSON: We come to them.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: Ja okay.

10 **ADV HOFMEYR:** Thank you Chair we are indebted.

CHAIRPERSON: Okay.

ADV HOFMEYR: Professor Mokgoro if we could then commence. I understand that you are currently the Premier of the North West Province, is that correct?

PROF MOKGORO: Yes that is correct Chair.

ADV HOFMEYR: Thank you. And what position did you hold in 2014/2015 period in the Province?

PROF MOKGORO: I was the acting Director General in the office of the Premier.

20 **ADV HOFMEYR:** And when – can you recall what particular period that covered? When did you cease to be the acting DG in the office?

PROF MOKGORO: I think it was sometime in 2015 once the Premier had appointed a substantive Director General.

ADV HOFMEYR: But for the matters that we are concerned

with today which take us up to March 2015 you were still the acting Director General, is that correct?

PROF MOKGORO: That is correct.

ADV HOFMEYR: Thank you. And what qualifications do you hold Professor Mokgoro?

PROF MOKGORO: I – I have a BSC Degree, an Honours Degree, a Master's Degree and I am also an Honorary Doctorate.

ADV HOFMEYR: Of which institution is that; that you hold
10 the Honorary Doctorate?

PROF MOKGORO: Toledo University in Ohio in the United States.

ADV HOFMEYR: And Professor Mokgoro when you were in the position of acting Director General within the office of the Premier you then held the position of Accounting Officer as that position is understood in the PFMA, is that correct?

PROF MOKGORO: Yes that is true. Accounting Officer in the office of the Premier.

20 **ADV HOFMEYR**: in the office of the Premier. And did you have an understanding at the time of what the legal obligations were of the Accounting Officer under the PFMA?

PROF MOKGORO: Yes certainly. During the first administration 2014 to – no 1994 up to 1999 I was the first

Director General in the office of the Premier.

ADV HOFMEYR: Right so from that far back.

PROF MOKGORO: Yes.

ADV HOFMEYR: You were familiar with the responsibilities.

PROF MOKGORO: Yes. Yes.

ADV HOFMEYR: Is that correct?

PROF MOKGORO: That is right.

ADV HOFMEYR: I would like to take you to one or two of
10 them in particular because they are going to be relevant
for the evidence today. And for that purpose just so that
you can have reference to the PFMA one of the files that
has been placed before you is called the Aviation
Legislation Bundle; you will see that on your left hand side.
Chair you will be handed the relevant file in a moment. I
would like us to turn in that file to page 63, 63.

CHAIRPERSON: Page –

PROF MOKGORO: Yes I think I have it.

ADV HOFMEYR: That is within the Public Finance
20 Management Act that we have been discussing and which
we refer to as the PFMA for short. And you will on page 63
that there is a section there Section 36 dealing with
Accounting Officers. Is that a section that you are familiar
with?

PROF MOKGORO: Yes I am.

ADV HOFMEYR: And you will see that it is the Accounting Officer's in Section 36 of departments and constitutional institutions. Here we are dealing with the Department which is the Provincial Department the office of the Premier and if you go down the page you will see at Section 38 there are certain general responsibilities of Accounting Officers. Is that a section that you are familiar with?

PROF MOKGORO: Yes Chair it is.

10 **ADV HOFMEYR**: And I would like to highlight just some of the responsibilities that you held pursuant to this section of the PFMA when you were the Accounting Officer in the office of the Premier at the relevant time that we will be discussing today. If you go to Section 38.1c. And it is 1cii that I am interested in. The section says:

20 "That the Accounting Officer for a department trading entity or constitutional institution [c] must take effective and appropriate steps to [ii] prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct."

Did you understand that in the period 2014/2015 to be one of your legal obligations?

PROF MOKGORO: I certainly did understand that Chair.

ADV HOFMEYR: And would you accept that unauthorised expenditure would be expenditure that was not budgeted for by a particular department?

PROF MOKGORO: Yes that would also include expenditure that did not go through a normal procurement process.

ADV HOFMEYR: Thank you. Professor Mokgoro I have just been alerted to the fact that could we ask that you move yourself just a bit closer to the microphone. It is not
10 coming through as clearly as we might like.

PROF MOKGORO: Oh I will pull it closer to you.

ADV HOFMEYR: Yes.

CHAIRPERSON: Ja.

ADV HOFMEYR: Either way the [00:12:28] increased.

CHAIRPERSON: Ja it does not have too close but do not be too far.

PROF MOKGORO: Okay Chair will do that.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you. So we have clarified that
20 unauthorised expenditure would be expenditure not budgeted for; you accepted that. You said unauthorised expenditure would be expenditure that had not followed procurement processes, is that right?

PROF MOKGORO: That is correct.

ADV HOFMEYR: Thank you. And then if we go over the

page to page 64 you will see another of the legal obligations of an Accounting Officer that I would like to highlight. And you will find that in L down the page. So it is actually Section 38.1I and what

10 “That requires is for the Accounting Officer to take into account all relevant financial considerations including issues of proprietary, regularity and value for money when policy proposals affecting the Accounting Officer’s responsibilities are considered.”

And I ask again is that an obligation that you were aware of having on you at the time 2014/2015?

PROF MOKGORO: Certainly Chair.

ADV HOFMEYR: And then still on that page you will see that Section 38.2 a little bit way of the way down also gives another obligation to Accounting Officers. It say that:

20 “An Accounting Officer may not commit a department, trading entity or constitutional institution to any liability for which money has not been appropriated.”

Did you understand that to be one of your obligations?

PROF MOKGORO: Certainly Chair I did.

ADV HOFMEYR: And an appropriation would take place

through an appropriation bill at the relevant time in the year, is that correct?

PROF MOKGORO: Yes certainly.

ADV HOFMEYR: And those appropriations are done pursuant to budgets that are developed for each of the departments, is that correct?

PROF MOKGORO: That is correct Chair.

ADV HOFMEYR: So unbudgeted expenditure would be something that had not been properly appropriated, is that
10 correct?

PROF MOKGORO: Certainly.

ADV HOFMEYR: Thank you. And then if we go down just to Section 39 where I will conclude this point. I am interested there in Section 39.1b. Because that is a further obligation placed on the Accounting Officer in relation to budgetary control. It says:

“The Accounting Officer for a department is responsible for ensuring that [b] effective and appropriate steps are taken to prevent
20 unauthorised expenditure.”

Given your previous answers I take it you will accept that was also an obligation on you as Accounting Officer, is that correct?

PROF MOKGORO: That is correct Chair.

ADV HOFMEYR: Thank you. Professor Mokgoro I would

like to then move away from the legislation bundle and we will go back into your bundle which is Bundle DD32. Now if we could start at page 5 of DD32. Chair this is where we will need to enter the first exhibit. The first exhibit is the sworn statement of Professor Mokgoro dated the 22 July 2019. If that could be Exhibit 1 in Bundle DD32.

CHAIRPERSON: The sworn statement by Professor Mokgoro appearing from page 1 is admitted and will be marked as Exhibit – did you say 1?

10 **ADV HOFMEYR:** 1 of Bundle DD32.

CHAIRPERSON: I wonder whether you should say Exhibit 1 or maybe say Exhibit 32.1 just to give that.

ADV HOFMEYR: Yes certainly. I think I was being approached about that very point at the time.

CHAIRPERSON: Yes.

ADV HOFMEYR: So if we can make it DD32.1.

CHAIRPERSON: Yes.

ADV HOFMEYR: That will be ideal thank you.

CHAIRPERSON: Yes. Exhibit DD32.1. ja.

20 **ADV HOFMEYR:** Thank you Chair. And then Professor Mokgoro if we pick it up at page 5 of your first sworn statement which is Exhibit DD32.1. You say there at paragraph 10 – you dealing with the origin of the transaction that the commission is interested in and received evidence about in the middle of last year. And

that was the transaction involving the North West Government and South African Express Airways and as I understand it you linked in paragraph 10 the origin of the transaction to this inaugural State of the Province Address of the Fifth Administration which was delivered in June 2014, is that correct?

PROF MOKGORO: That is correct Chair.

ADV HOFMEYR: Have you had occasion to take a look at the speech that was delivered at the inaugural State of the Province Address since then?

PROF MOKGORO: Recently yes Chair.

ADV HOFMEYR: And would – did you manage to find any reference to the airport development in that speech?

PROF MOKGORO: The matter was about the total development of Mafikeng.

ADV HOFMEYR: Yes. There was certainly reference to the development of Mafikeng. Did you find any reference at all though to the specific issue of flights to Mafikeng and Pilanesberg airports in that speech?

20 **PROF MOKGORO**: I do not have any recollection of that.

ADV HOFMEYR: Well we – that is why we placed this speech. The text of the speech in your bundle. We went to go and look at it and considered it quite carefully to see if there had been in the course of that speech of the Premier in June 2014 any mention at all of the airport

developments and we did not find that. Do you accept that it is not there?

PROF MOKGORO: Ja I accept that.

ADV HOFMEYR: But what you do say is it did talk generally about the development of Mafikeng. Is that right?

PROF MOKGORO: That is right.

ADV HOFMEYR: Correct. And then you go on and say that – that is at paragraph 11 on the same page that there
10 was an announcement in that State of the Province Address that there would be a resuscitation of the Mafikeng airport. Do you now accept that that is incorrect?

PROF MOKGORO: Yes I do Chair.

ADV HOFMEYR: Can you explain that error on your part in paragraph 11?

PROF MOKGORO: Well the – the major projects that were part of the MRRRP they have always been foremost in my memory about that huge project.

ADV HOFMEYR: The MRRRP is something we are going to
20 come to.

PROF MOKGORO: Yes.

ADV HOFMEYR: Because your sworn statement talks about it. Just for present purposes can I ensure that you and I understand it correctly? It was a – a project to revitalise and rejuvenate Mafikeng, is that correct?

PROF MOKGORO: That is correct Chair.

ADV HOFMEYR: It had nothing to do with Pilanesberg?

PROF MOKGORO: Pilanesberg was obviously not in Mafikeng Chair.

ADV HOFMEYR: Yes so it ...

CHAIRPERSON: Sorry just repeat that. Just repeat your answer?

PROF MOKGORO: Pilanesberg is certainly not in Mafikeng.

10 **CHAIRPERSON:** Yes.

PROF MOKGORO: Chair.

ADV HOFMEYR: And you – you accept now that paragraph 11 is incorrect insofar as you indicated that there was a specific reference in the speech to the resuscitation of the airport. Is that correct?

PROF MOKGORO: That is correct Chair.

20 **ADV HOFMEYR:** There were other things that that speech discussed as important initiatives that were going to be undertaken by the Province and particularly under the direction of the Premier. I am going to just list a few of them that we picked out for you to indicate whether you disagree with our understanding of the speech at all. What the speech indicated the Province was going to be committed to were things such as safety nets and social services being provided to orphans and vulnerable children

affected by HIV and Aids. Do you recall that as a feature of it?

PROF MOKGORO: Yes Chair.

ADV HOFMEYR: And to engage in social crime prevention programs, do you remember that?

PROF MOKGORO: Yes Chair.

ADV HOFMEYR: There would be empowerment programs devised for victims of gender based violence, do you recall that?

10 **PROF MOKGORO**: Yes Chair.

ADV HOFMEYR: There was going to be foster care and child protection services provided by the Province. Do you recall that?

PROF MOKGORO: Yes Chair.

ADV HOFMEYR: There were going to be food production initiatives in order to improve food insecurity within the Province. Do you recall that?

PROF MOKGORO: Yes Chair.

20 **ADV HOFMEYR**: And there was going to be training of youth in various trades so that they could join the job market which was an issue reflected in the speech.

PROF MOKGORO: Yes Chair.

ADV HOFMEYR: There was going to be building of housing units for mining communities. Do you recall that?

PROF MOKGORO: Yes Chair.

ADV HOFMEYR: Subsidisation of agriculture and other small business initiatives? Do you recall that?

PROF MOKGORO: Yes Chair.

ADV HOFMEYR: And critical water and sanitation investments to prevent another outbreak of water borne diseases that it led to the deaths of young children in the Province. Do you recall that?

PROF MOKGORO: I recall that. I recall that Chair.

ADV HOFMEYR: So we have a similar understanding of
10 what the Premier was committing the Province in June of 2014 then when he gave the inaugural address. Is that correct?

PROF MOKGORO: Yes that is correct.

ADV HOFMEYR: What he did not mention was resuscitation of the Mafikeng airport, did he?

PROF MOKGORO: That is correct.

ADV HOFMEYR: Let us then go to what you have called the MRRR – I am going to call it the MRRRP project if I may? I understand that stands for the Mafikeng Recovery
20 Renewal and Repositioning Project or Program, is that correct?

PROF MOKGORO: That is correct Chair.

ADV HOFMEYR: Now you deal with that at page 8 paragraph 21 of you sworn statement which we have entered as Exhibit DD32.1. If we can pick it up there at

paragraph 21. Can you tell us about this MRRRP? What was your understanding of it at the time?

PROF MOKGORO: My understanding of it was the state in which Mafikeng was in quite a sorry state that there was a need to come up with a comprehensive revamping of Mafikeng especially given its status as [?].

ADV HOFMEYR: Right. Now this – here you refer to this MRRRP and you talk in the course of your statement about various documents that were produced over the time the
10 year 2014 which as I understand it from your statement sought to give content to the project and the program. Is that correct?

PROF MOKGORO: That is correct Chair.

ADV HOFMEYR: Right. Now what happened in October of 2014 according to your statement is that a provincial planning commission was put together to develop a proposal for this. Is that correct?

PROF MOKGORO: That is correct Chair.

ADV HOFMEYR: I just want to our chronology right
20 because we are going to look at the proposal in a moment. But you are familiar with the evidence Ms Phatudi, is that correct?

PROF MOKGORO: Yes I – I am.

ADV HOFMEYR: Her evidence indicated that even before the planning commission presented its proposal in October

2014 there had already been an initiative to get airlines to come and make a presentation at Sun City. Do you recall that?

PROF MOKGORO: Yes I recall that there was such a presentation.

ADV HOFMEYR: Yes. Her evidence was that that took place in August so just so we get the chronology right. We have got the Premier's State of Inaugural Address in June of 2014. We have confirmed no reference is made to the
10 resuscitation of the Mafikeng or the Pilanesberg airports in that speech. Then in August of 2014 six airlines get invited to make presentations to the Province at Sun City. Are you aware of that?

PROF MOKGORO: Yes I heard about that.

ADV HOFMEYR: You heard about it. Did you attend those presentations?

PROF MOKGORO: No I did not.

ADV HOFMEYR: No.

PROF MOKGORO: No.

20 **ADV HOFMEYR:** Did you know of any tender process that was followed before they were asked to come and presentations?

PROF MOKGORO: As secretary of the Executive Council certainly when presentations – various presentations were made at EXCO I was but in addition to that once the policy

broad policy statement had been made by the Premier at State of the Province Address the process of implementation would then look at priority projects and this will become clearer and clearer to normal government processes.

ADV HOFMEYR: Professor Mokgoro my question was were you aware before August 2014 when these airlines were invited to Sun City whether there was any tender process followed – a request for bids for example or a request for
10 proposals. Are you aware of that having been followed?

PROF MOKGORO: Once was the airline initiative was pronounced upon clearly the procuring department had a task to embark on procurement.

ADV HOFMEYR: Yes. Again we are in August of 2014.

CHAIRPERSON: Yes hand on one second. Her question was whether I think you were aware whether any tender processes were followed before August 2014.

PROF MOKGORO: Well I cannot remember precisely before what time but I certainly am aware.

20 **CHAIRPERSON:** Ja.

PROF MOKGORO: That the responsibility of the Department of Community, Safety and Transport Management a course one of the priority projects was in airport had an obligation to embark on a [00:26:44].

CHAIRPERSON: I am sorry, I am sorry Mr Premier could

you just repeat that answer but look this side because I am trying to follow you.

PROF MOKGORO: I am saying – I am not – I am not precise in terms of before August or whatever but what I am saying as the progress of giving practicality to the policy initiative of the Premier which started at State of the Province Address I am aware that one of the priorities – I was aware that one of the priorities was to revamp the airports. I do not have any recollection as to my
10 awareness was before or after August.

CHAIRPERSON: About whether tender processes were followed. You are not aware whether – you were not – you cannot say from when you became aware if you did become aware that tender processes were not followed you cannot remember when?

PROF MOKGORO: I cannot be specific in terms of time I do not have recollection in terms of time all I am saying is I was aware that the Department of Community, Safety and Transport Development had the responsibility to procure
20 like any other department and did report on procurement to EXCO>

CHAIRPERSON: Yes.

PROF MOKGORO: And that – and the – and because of my responsibility as Secretary to Executive Council I was aware.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you Professor Mokgoro. I appreciate that at some time back but I want to be clear about why the chronology is important. Because we have established that there was no resuscitation of the airports referred to in the Inaugural State of the Province Address in June you see. The first time it actually comes up is in that policy planning document which we are going to look at in a moment which is October 2014. But critically
10 between those two events six airlines get invited to Sun City to make presentations and what I wanted to understand from you is whether you were aware of any procurement process being followed before that. I understand your evidence to be you do not; you are not aware of any procurement process being followed before that August 2014 invitation. Is that correct?

PROF MOKGORO: I was aware of procurement processes because that was reported on – on – at EXCO but when that was I do not have a recollection.

20 **ADV HOFMEYR:** We will come to whether it was actually a procurement process.

CHAIRPERSON: I am sorry, I am sorry. You were aware of procurement processes having – taken place.

PROF MOKGORO: As reported by the relevant department to EXCO.

CHAIRPERSON: As reported – okay alright.

PROF MOKGORO: Yes as reported by the department to EXCO>

CHAIRPERSON: Yes.

PROF MOKGORO: Which I was secretary of.

CHAIRPERSON: Yes.

PROF MOKGORO: But with regard to the nitty gritty of procurement.

CHAIRPERSON: Yes.

10 **PROF MOKGORO:** I obviously was not involved.

CHAIRPERSON: Yes. Does that mean that the relevant department reported to EXCO or does it mean that the reports or report that the relevant department made to EXCO included saying there had been compliance with procurement processes from what you remember in terms of what they reported to Eskom?

PROF MOKGORO: Yes, Chair in terms of what they reported to Eskom, they did point out that they had invited six companies and they were going through that process of
20 procurement. I was aware that those reports were made to Exco.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you, Professor Mokgoro. It might be useful for you and I just to ensure that we have the same understanding of a procurement process, right?

Because the evidence of Ms Phatudi who was the CFO in that department at the time, was that no proper procurement process was followed in relation to this airline invitation.

There was no bid for proposals. There was no bid specification committee convened. There was no bid adjudication committee convened. There was no invitation to tender.

What there was, was an invitation to six airlines to come
10 to Sun City and to make a presentation. Can you disagree with her evidence in that respect?

PROF MOKGORO: No, no, no. I do not. Remember, you are talking about a department that was different or separate from my department which was the office of the precinct.

ADV HOFMEYR: So if the department ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry Ms Hofmeyr. Is that evidence given by Ms Phatudi as summarised by Ms Hofmeyr consistent with what that department told Exco as far as you recall?

20 **PROF MOKGORO:** Well ...[intervenes]

CHAIRPERSON: Or was it ...[intervenes]

PROF MOKGORO: It is not the department who respond... they reported to Exco, was at the end of the process that they alleged had happened.

CHAIRPERSON: Yes. But what I am asking is, whether

when you hear that Ms Phatudi who CFO of the department as time, has told the Commission that there was no open tender process that was followed.

Does that... is that consistent with what you understood the department to have reported to Exco?

Or your reaction is that: I do not think that is what... I do not think that is what the department told Exco. My understanding of what the department told Exco is different and it is this.

10 **PROF MOKGORO:** Certainly, Ms Phatudi's evidence contradicts what the MEC reported to Exco.

CHAIRPERSON: Yes, okay. Ms Hofmeyr.

ADV HOFMEYR: Prof Mokgoro, that is quite an important point and we will return to it when we will look at that particular submission that was made to Exco which you have helpfully provided to the Commission.

But for where we are the moment. Your understanding, and correct me if I have got it incorrectly, was that when that presentation was made Exco, you were satisfied that a
20 proper procurement process had been followed. Is that correct?

PROF MOKGORO: Yes, I had nothing, no reason to doubt what the MEC was reporting to the executive council.

ADV HOFMEYR: Yes, but what if the MEC just said they invited six airlines to do a presentation. Would that have

been a proper procurement process?

PROF MOKGORO: Well, I mean, that is how government operates on a day-to-day basis. I mean, the director general, accounting officer and the officer of the premier is an accounting officer in the Office of the Premier and nowhere else.

CHAIRPERSON: I am sorry. Just repeat that answer, Mr Mokgoro.

PROF MOKGORO: I am saying, an accounting officer
10 sitting in the Office of the Premier, is not privy to the nitty-gritty processes of department, be it procurement or whatever. So it is really up to the integrity of a particular department and especially the accounting officer to ensure that when public funds are expended, they are expended in line with the PMFA as was read earlier.

CHAIRPERSON: But I think Ms Hofmeyr's question is this. In terms of your own understanding of what... of the procurement processes that government departments are supposed to follow.

20 Would you have understood what had happened to have been in compliance with such procurement process if you had been told, all that had been done was to invite six airlines to come to Sun City, make a presentation and then one of those was picked as the one that who would be given the contract?

Would that have satisfied procurement procedures as far as you understood them?

PROF MOKGORO: My understanding would be that under normal circumstances that would not. And as I recall, the explanation that was given. Because of the restricted number of airlines that would operate in the identified routes, that was the route the department saw appropriate to follow.

ADV HOFMEYR: Well, you see Professor Mokgoro. Ms Phatudi's evidence was that, because no procurement
10 process was followed, actually, there was no way of knowing what the market was like, what could be provided. That is why you go through a bid specification process, right?

You try and establish what is available, what are your needs, how can they be met, and then you ask for proposals in response to a specification.

Her evidence was, because none of that was followed, they simply invited six airlines. Six airlines who were not even responding to a proposal. So they came with various proposals.

20 Some thought that there could be flights between Mafikeng and Pilanesberg. Others thought that there should be flights between Johannesburg and Cape Town and Mafikeng and then go on to the rest of Africa.

Would you except sitting here today that that is not the way to run a proper process.

PROF MOKGORO: Certainly, at face value, it is not a normal way to approach a procurement process, Chair.

ADV HOFMEYR: Thank you. So then let us move to October of 2014, right? Because it is in October of 2014 that this provincial planning commission puts together that proposal which you attached to your sworn statement. And you will find that commencing in DD32, that is the bundle we are currently in.

PROF MOKGORO: H'm.

10 **ADV HOFMEYR:** And you will find it at page 38 in DD22. Now Chair ...[intervenes]

CHAIRPERSON: Page?

ADV HOFMEYR: 38. Three, eight. I am going to ask Chair that we enter this as the second exhibit. This will be Exhibit DD32.2. And it is... it comprises the annexures to the sworn statement that is DD32.1.

CHAIRPERSON: It was meant to have been an annexure to that affidavit but was not attached and it is now comes as a separate document?

20 **ADV HOFMEYR:** Exactly, exactly.

CHAIRPERSON: Okay. The... it starts at page 38?

ADV HOFMEYR: It does not start at page 38. It starts at 29, Chair.

CHAIRPERSON: Oh.

ADV HOFMEYR: But the page I am interested in looking at

is page 38.

CHAIRPERSON: Okay.

ADV HOFMEYR: Chair, I must make one correction. Apologies. We entered as Exhibit 32.1 the first sworn statement of Professor Mokgoro.

CHAIRPERSON: H'm.

ADV HOFMEYR: It does have attached to it theories of annexures.

CHAIRPERSON: H'm?

10 **ADV HOFMEYR:** I am working in one of those annexures now.

CHAIRPERSON: Oh, I see.

ADV HOFMEYR: Those annexures, however, are in part incomplete. And so we then need to go to the second sworn statement ...[intervenes]

CHAIRPERSON: Yes.

ADV HOFMEYR: ...on occasion to get the completed annexure.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** But the one I am in at the moment is complete for our purposes. So I do not want there to be a misunderstanding in relation to the record.

CHAIRPERSON: Yes.

ADV HOFMEYR: I think it is preferable that we simple refer to it now as annexure to the sworn statement which has

already been entered as Exhibit 32.1 if you are comfortable with that.

CHAIRPERSON: But it... is it one of those annexures that did come with the affidavit?

ADV HOFMEYR: Yes. Yes, it did.

CHAIRPERSON: Okay, ja. All of those will fall under ...[intervenes]

ADV HOFMEYR: Under 32.1.

CHAIRPERSON: Ja. Yes. Ja.

10 **ADV HOFMEYR:** Thank you. Then I do not need to enter a new one.

CHAIRPERSON: Yes.

ADV HOFMEYR: I am indebted.

CHAIRPERSON: H'm.

ADV HOFMEYR: If we can then go to page 38, Professor Mokgoro. Do you have that?

PROF MOKGORO: Yes, I do.

ADV HOFMEYR: And page 38, as I indicated previously from your sworn statement, is part of the proposal that the
20 Provincial Planning Commission put together in October of 2014. Is that correct?

PROF MOKGORO: That is right.

ADV HOFMEYR: And this was a proposal for the Mafikeng Recovery and Renewal Repositioning Project, is that right?

PROF MOKGORO: Yes, that is right.

ADV HOFMEYR: And this is the first time Professor Mokgoro that we were able to pick up a reference to the airports and it is here. It is on page 38. Can you read for us the second line in that table that is presented on page 38?

PROF MOKGORO: H'm. A briefing of the Mafikeng Airport.

ADV HOFMEYR: And what were the milestones? What was going to happen with those upgrading of the airport?

PROF MOKGORO: I am reading, runway of international status, freight and movement of logistics, establishment of a
10 logistic hub, solar module course(sic).

ADV HOFMEYR: Right. And who was to be the ...[intervenes]

PROF MOKGORO: Cells, rather.

ADV HOFMEYR: Yes, sorry. Solar module cells. Correct. And who was to be the implementing agency of this initiative?

PROF MOKGORO: I cannot recall.

ADV HOFMEYR: If you look at the next column, it is headed implementing agency. Which department is reflected there?

20 **PROF MOKGORO:** The Department of Public Works and Roads.

ADV HOFMEYR: That is not the Department of Community, Safety and Transport Development?

PROF MOKGORO: No, it is not.

ADV HOFMEYR: Right. And who was going to be

consulted? That is the next column.

PROF MOKGORO: Enterprise Development Department, Mafikeng Municipality.

ADV HOFMEYR: And what was the target date for this?

PROF MOKGORO: March 2018.

ADV HOFMEYR: I think that is actually '16 on the best of copies.

CHAIRPERSON: Ja, 2016.

PROF MOKGORO: Ja.

10 **ADV HOFMEYR**: Yes.

PROF MOKGORO: 2016.

ADV HOFMEYR: And... thank you. So that was the upgrading of the Mafikeng Airport which according to this proposal was going to be undertaken by the Department of Public Works and Road, is that correct?

PROF MOKGORO: Yes, that is right.

ADV HOFMEYR: I could find no reference in this proposal to the upgrading of the Pilanesberg Airport. Was there any mention of it that you are aware of?

20 **PROF MOKGORO**: No, not... no.

ADV HOFMEYR: And do you agree with my understanding of these miles that were related to the upgrading of the airports? These are things about getting the runway right, it is about freight and movement of logistics and solar module cells. All the sorts of things you would give to the

Department of Public Works and Roads, are they not?

PROF MOKGORO: Well, firstly, the department referred to is in appropriate because it is not their mandates.

ADV HOFMEYR: It is not their mandate to upgrade runways?

PROF MOKGORO: Well, it is not their mandate to deal with matters of roads, on the roads, as well as...

ADV HOFMEYR: Well, hang on a moment. What I understand is that the implementing agency here was going
10 to the Department of Public Works and Roads, correct?

PROF MOKGORO: Right.

ADV HOFMEYR: Right. So ...[intervenes]

PROF MOKGORO: As it is reflected.

ADV HOFMEYR: As it is reflected ...[intervenes]

PROF MOKGORO: Yes.

ADV HOFMEYR: ...in the proposal that was put together by the Planning Commission.

PROF MOKGORO: Yes, that is right.

ADV HOFMEYR: Right. And amongst the things that were
20 going to be done to upgrade the Mafikeng Airport was, there was going to be an upgrade of the runways, right?

PROF MOKGORO: Right.

ADV HOFMEYR: Is that not something that would be handled by the Department of Public Works and Roads?

PROF MOKGORO: Well, essentially, the key department

would be Committee Safety and Transport Management. And as it happens, typically government operators have collaborative hold. Other departments will be drawn in, depending on but certainly, I would designate the key department as Committee Safety and Transport Management.

ADV HOFMEYR: Yes, that is ...[intervenes]

PROF MOKGORO: Because it fits more with the amendments.

ADV HOFMEYR: H'm. But that is not to the Provincial
10 Planning Commission identified as the implementing agency?

PROF MOKGORO: Well, as... yes.

ADV HOFMEYR: They identified a very different department. The Department of Public Works and Roads, correct?

PROF MOKGORO: That is correct.

ADV HOFMEYR: And it was matters related to the physical space of the airport as I understand it because they wanted to upgrade runways, correct?

PROF MOKGORO: That is it but it would not be out of the
20 ordinary. If, as I have said earlier, because Committee Safety and Transport Management through in other departments.

ADV HOFMEYR: Correct. But what is ...[intervenes]

PROF MOKGORO: Such as Public Works.

ADV HOFMEYR: Such as Public Works. Well, and such as

Committee Safety and Transport Development. What I do not see listed here as the milestones for this upgrading of the airport, is flights. Do you see any reference to flights?

PROF MOKGORO: No, the flights here.

ADV HOFMEYR: No. That is what was ultimately paid for when you authorised the payments of R 50 million in March of 2015.

PROF MOKGORO: That is right.

ADV HOFMEYR: Correct?

10 **PROF MOKGORO**: That is right.

ADV HOFMEYR: It was going to be flights.

PROF MOKGORO: That is right.

ADV HOFMEYR: But flights are not part of the Planning Commissions' proposal.

PROF MOKGORO: That is right.

ADV HOFMEYR: Is that correct?

PROF MOKGORO: Ja.

ADV HOFMEYR: Thank you. The next thing that happens is that you gave a progress report as I understand it, from your
20 sworn statement on the MRRP. And you gave to that executive council members on the 28th of October 2014. Do you recall that?

PROF MOKGORO: Well, I recall that, from time-to-time, as some kind of overseer, I would be required to collect information from the various departments and give the

progress report.

ADV HOFMEYR: Right. Let us go to that progress report, if we can? You will find it at various places. Now Chair, this is one of those places where we got... Professor Mokgoro, in fairness to you.

I think what happened is. When your first sworn statement was put together the annexures were copies with only one side of a double-sided page because we are keep getting page 1, 3 and 5 but we do not get page 2 and 4, for
10 example.

Have you managed to understand how the problem arose that incomplete annexures were attached to your first sworn statement?

PROF MOKGORO: Well, I was made aware of the problem and I gave instructions that that be corrected. I am surprised that it never was.

ADV HOFMEYR: It was corrected in relation to the document we are going to go to now. It was then corrected in relation to certain other documents that I will be coming
20 to. But I understand from communication from your lawyers yesterday, the difficulty is that some of the documents have just not been able to be found but we will come to that in a moment.

PROF MOKGORO: Yes.

ADV HOFMEYR: Right. So let us go to, if we may, this

proposal that was put together by yourself. And I am going to have to go to now to... let me see here, the second version that we got of this document. And you will find that...

Chair, now we will need to enter a new exhibit if we may? What I am now entering as a new exhibit is the document that commences at page 112 of Exhibit DD32 and what I request is that that document commencing at page 112 be entered as Exhibit DD32.2.

10 **CHAIRPERSON:** That is just the letter here alone?

ADV HOFMEYR: And what follows the letter, Chair.

CHAIRPERSON: The supplementary affidavit?

ADV HOFMEYR: Yes, exactly with its annexures. So I am suggesting ...[intervenes]

CHAIRPERSON: Yes.

ADV HOFMEYR: ...that we keep all in Exhibit DD32.2.

CHAIRPERSON: Yes, the letter of page 112 from Ms S L Mbanjwa(?) to the Commission will be admitted with its annexures and marked Exhibit DD32.2.

20 **LETTER (PAGE 112) IS ADMITTED AND MARKED AS DD32.2**

ADV HOFMEYR: Thank you, Chair. Now Professor Mokgoro, I am going to need to ask you to move between two parts of the file because of this issue where the alternate pages were missing from your first sworn statement

but I do have a record of where we need to move. So hopefully, we will be able to do so fairly swiftly.

What I would like you to go to is at page 120 that I identified for you which you will find in the Exhibit DD32.2. This is part of the report that you gave to the executive council members on the 28th of October 2014, is that correct?

PROF MOKGORO: That is right.

10 **ADV HOFMEYR:** And you will see that at Item 2.7 on that page there is a reference to the Mafikeng Airport Development. Do you see that?

PROF MOKGORO: Yes.

ADV HOFMEYR: Now this is a document you put together as I understand your statement. Is that right?

PROF MOKGORO: That is right.

ADV HOFMEYR: What did you reflect at point 2.7 about that development?

PROF MOKGORO: Well, it says at 2.7:

20 “Mafikeng Airport to establish airlift and connectivity to other possible countries and position gateway to Africa, SADEC, passenger and cargo...”

ADV HOFMEYR: So where did you get that new description for the airport development from? Because you will see that is quite different to the one that we saw in the Provincial Planning Commission’s document.

PROF MOKGORO: That is right.

ADV HOFMEYR: Where did you come up with that new characterisation of the development?

PROF MOKGORO: Well, as is the nature of some of these policy items, you know, and from time-to-time, implementation changes, depending on what principles pronounced at policy level.

ADV HOFMEYR: H'm.

PROF MOKGORO: Ja.

10 **ADV HOFMEYR:** Who are the principles you are referring to there?

PROF MOKGORO: The policy making.

ADV HOFMEYR: I beg your pardon? It is Exco?

PROF MOKGORO: Policy making of any provincial government.

ADV HOFMEYR: So between the Provincial Planning Commission's proposal which also occurred in October and you putting this report together, which principles had you spoken to about this new characterisation of the
20 development?

PROF MOKGORO: Well, I can only venture because as you can see, it is quite a while ago. That it might have been as part of the evolution of policy. You have a broad policy that says, redo the airport and there are so many project components that would get into that.

ADV HOFMEYR: Okay. In your report, you also identified what the financial implications were going to be of this MRRP.

PROF MOKGORO: That is right.

ADV HOFMEYR: Is that correct?

PROF MOKGORO: Ja, that is right.

ADV HOFMEYR: Is it fair to say that is part of your report that you took seriously, giving your responsibilities as accounting officer?

10 **PROF MOKGORO:** No. As I say, I was a quali-dater, not an accounting officer.

ADV HOFMEYR: Right. So you were taking information from others and putting it together?

PROF MOKGORO: Yes, that is ...[intervenes]

ADV HOFMEYR: Is that right?

PROF MOKGORO: Yes, that is true.

ADV HOFMEYR: So who came up with the financial implications section of this report?

PROF MOKGORO: Financial implications could only have
20 come Committee Safety and Transport Management.

ADV HOFMEYR: Well, but remember, this is the MRRP Project as a whole. So and it is the financial implications of that whole project. So that would not have just been Committee Safety and Transport Management, would it?

PROF MOKGORO: Well, it certainly I would have copied in

to determine prices of respective departments.

ADV HOFMEYR: Yes. So would it be fair to say, you were getting input from all the affected departments and putting the financial implication together?

PROF MOKGORO: Yes.

ADV HOFMEYR: Right. Let us go to what is set out in your report about the financial implications. And you have to go back into Exhibit DD32.1 for that and you will find it at page 44. Four, four.

10 **PROF MOKGORO**: So 32, Chair?

ADV HOFMEYR: You must go back in the file to page 44. Four, four.

PROF MOKGORO: Okay.

CHAIRPERSON: I think the file that has got your first affidavit.

ADV HOFMEYR: Do you have that page?

PROF MOKGORO: I have got it, Chair.

ADV HOFMEYR: And what you indicate under Clause 4.1 on that page is:

20 “An amount of R 132 million was allocated to
 implement MRRP and four lead agencies were
 identified.”

Do you see that?

PROF MOKGORO: Yes, I see that Chair.

ADV HOFMEYR: And Professor Mokgoro, can you just

confirm that my understanding of your sworn statement is correct? You made repeated reference in your sworn statement to this R 132 million that had been allocated for the MRRP Project. Is that right?

PROF MOKGORO: That is right.

ADV HOFMEYR: And I understand your statement to say, the R 50 million that you authorised to pay out in March of 2015, came from this R 132 million that was allocated. Is that right?

10 **PROF MOKGORO:** Well, that is the amount that was initially allocated.

ADV HOFMEYR: Yes. You say in your statement, you were satisfied to authorise the R 50 million because it came from the R 132 million that had been identified in this report, correct?

PROF MOKGORO: It came from that budget.

ADV HOFMEYR: Yes. Okay. Let us look at that budget as you set it out at page 44. Because what you do there is, you identify the projects that are going to be undertaken for
20 which the R 132 million has been allocated. Is that correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: And you will see that that table appear and then at the bottom there is a total and you get a total of R 132 million, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: So in your report on the 28th of October, you identified what was going to make up the R 132 million that had been identified for the implementation of the report. Can you please point me in that table to where the refurbishment of the Mafikeng Airport appears?

PROF MOKGORO: I missed that question, Chair.

ADV HOFMEYR: Can you show me in the table where the resuscitation of the Mafikeng Airport appears?

PROF MOKGORO: No, there is no reference to the airport.

10 **ADV HOFMEYR:** Yes.

CHAIRPERSON: Mafikeng's beautification would not be, would it?

PROF MOKGORO: No, Chair.

CHAIRPERSON: Ja.

ADV HOFMEYR: No, it is not there, is it Professor Mokgoro?

PROF MOKGORO: As in Mafikeng beautification was something else.

20 **ADV HOFMEYR:** Yes. So the resuscitation of the Mafikeng Airport does not appear here, does it?

PROF MOKGORO: No, it does not Chair.

ADV HOFMEYR: Yes. And the R 132 million is quite carefully identified as being compromised... Well, comprising seven projects as you indicate, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: There was going to be a design of a stadium for which there would be professional fees of R 10 million. Correct?

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: There was going to be a design extension of the convention centre which was going to be take R 3 million of the amount that had been ring fenced in the Office of the Premier. Is that correct?

PROF MOKGORO: That is correct, Chair.

10 **ADV HOFMEYR:** There was going to be R 72 million dedicated to what is called a Quick-Links(?) or Quick-Winds(?) Project, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: That had nothing to do with the Mafikeng Airport, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: Then there were going to be security points costing R 10 million. There was going to be a BRP Rhino Studio for R 10 million. Correct?

20 **PROF MOKGORO:** That is correct, Chair.

ADV HOFMEYR: There was going to be feasibility studies, business plans and architect designs for R 15 million, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: And a communication strategy for

R 2 million, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: And finally, the item that the Chair identified, the Mafikeng beautification was going to take ten per cent of that budget. Oh, R 10 million of that budget, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: So that is how you accounted for the financial implications of the R 132 million that was going to
10 be ring fenced in the Office of the Premier for the MRRP Project, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: And the Mafikeng Airport played no part in that identified R 132 million?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: Pilanesberg Airport did not either, correct?

PROF MOKGORO: It does not, Chair.

ADV HOFMEYR: Thank you. Now I then would like to go, if we may back to your sworn statement at page 14. That is in
20 Exhibit DD32.1.

PROF MOKGORO: Page 14?

ADV HOFMEYR: 14. One, four. Yes. Then you talk about another presentation that was prepared by the Office of the Premier and you attached it as exhibit... Annexure TJM3. We will go to it in a moment.

You say in your statement. This document that the introduction of passenger flights between Mafikeng and O.R. Tambo International Airport was assigned from the beginning to the department, right?

PROF MOKGORO: [No audible reply]

ADV HOFMEYR: Could we go to that annexure? You will find it commencing at page 47, four seven, of Exhibit DD32.1.

PROF MOKGORO: [No audible reply]

10 **ADV HOFMEYR:** You can flip through it if you need to but what I was just not able to establish Professor Mokgoro is, who was responsible for putting this presentation together? Do you recall?

PROF MOKGORO: Yes, I have some idea that some of the senior managers in the Office of the Premier were doing that. Ja.

ADV HOFMEYR: So did you have a hand in putting it together or was that left to other people?

PROF MOKGORO: Well, remember that this is putting
20 together, firstly, I will testify... decided on by those were responsible for all sorts of announcements and the various departments would make submissions based on whose department has competency or whatever.

ADV HOFMEYR: Okay. Because this is actually the first document that we were able to locate that talks about the

flights to Mafikeng Airport and that talks about the funding for it. Because we have established in your evidence already, all the other documents do not refer to it, do they?

PROF MOKGORO: Ja, that is possible.

ADV HOFMEYR: H'm. So let us look at what this document which I understand you to say was put together as a policy document by those responsible in the Office of the Premier. If we can look at what it says ...[intervenes]

PROF MOKGORO: No, no.

10 **ADV HOFMEYR**: Apologies.

PROF MOKGORO: Chair, by the departments to be... had put together by the Office of the Premier.

ADV HOFMEYR: Sorry. So the input comes from various departments.

PROF MOKGORO: Yes.

ADV HOFMEYR: But it is pulled together by the Office of the Premier. Is that correct?

PROF MOKGORO: That is right.

ADV HOFMEYR: But you yourself was not responsible for
20 putting this report together. Is that correct?

PROF MOKGORO: No, no, no.

ADV HOFMEYR: Your report was the 28 October one that we looked at a moment ago.

PROF MOKGORO: That is right.

ADV HOFMEYR: Where you had that section on financial

implications and nowhere does that refer to the airport as being part of the R 132 million that was ring fenced in the Office of the Premier?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: Let us go to what is said in this document about the Mafikeng Airport Development. You will find that at page 56, five six. It is in the same document we were looking at and so we are still in Exhibit DD32.1.

PROF MOKGORO: [No audible reply]

10 **ADV HOFMEYR**: Professor Mokgoro, you will see there on the left-hand side of that page... well, it is headed... let us start with what it is headed with. Mafikeng Airport Development. Do you see that?

PROF MOKGORO: Yes, I do Chair.

ADV HOFMEYR: And you will see that there is progress and challenges identified in the left-hand column.

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: Okay. Could you please read for us what those progress and challenges are that are reflected?

20 **PROF MOKGORO**: Yes.

“The departments to report on progress of each project. No funding available for some projects under this programme all ...[indistinct] involved under this programme need to coordinate more effectively the Acting Director General in discussion with possible

investor who is willing to invest in the airport development, reintroduction of passenger flight from Mafikeng to OR Tambo subsidy, maybe Exco for approval of an appointment service provider, projects are at different levels of execution.”

ADV HOFMEYR: Thank you. So could I just ask, that reference to the Acting Director General being in discussions with a possible investor, is that a reference to you?

10 **PROF MOKGORO:** Yes.

ADV HOFMEYR: And what were you involved in there?

PROF MOKGORO: I do not have a recollection of research and who were these possible investors. In government investors come from time to time, it could be any of them but ...[intervenes]

ADV HOFMEYR: Did anything ever happen with that?

PROF MOKGORO: No, I do not think so.

ADV HOFMEYR: Then let us move over to the table that appears adjacent to that left hand column.

20 **PROF MOKGORO:** Yes.

ADV HOFMEYR: Because you will see that it identifies the status of the programme and then there are various projects identified under the status of the programme. Do you see that?

PROF MOKGORO: That is right.

ADV HOFMEYR: So the first project was the increase of safety areas of runaway and upgrading. I think that is supposed to day runway, I do not think it is supposed to say runaway.

PROF MOKGORO: Runway.

ADV HOFMEYR: Yes. Am I right in that?

PROF MOKGORO: You are right, Chair.

ADV HOFMEYR: And you will there is an estimated budget for that item and an available budget. So the
10 estimated budget was 15 million and there is an identification that there is an available budget and you will see again the implementing agency there is that the Department of Public Works and Roads.

PROF MOKGORO: That is right.

ADV HOFMEYR: Right, which we saw previously was going to be looking at the upgrading of the runway. Then there is a cargo logistics hub or freight, part of the project, that we have seen reference to previously. It indicates there that the estimated budget is 1.2 billion and the
20 available budget in red says no funding. Do you see that?

PROF MOKGORO: I see that, Chair.

ADV HOFMEYR: So am I understanding this correctly to say that I understand this to mean insofar as there was a project for cargo logistics hub and freight being developed there was no funding for that when this report was put

together.

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: Right and then let us go to the one that we are interested in for the purposes of the Commission's work. The third programme or project is the reintroduction of passenger flights from Mafikeng to O R Tambo subsidy. What is the funding position for that project?

PROF MOKGORO: No funding, Chair.

ADV HOFMEYR: No funding. Right. So that accords with
10 what is said in red on the left hand column of the page, is it not? That there is no funding available for some of the projects under the programme, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: If there is no funding available for the project then it should not be authorised, should it?

PROF MOKGORO: Not necessarily so, Chair.

ADV HOFMEYR: Why is that?

PROF MOKGORO: Well, as I recall, the government at the time saw great need for revitalization of the airport but
20 I also recall that there was no funding in the Department of Community Safety and Transport Management. I also recall that the accounting officer of the department met with Provincial Treasury, I also recall that they made a recommendation that in view of the fact the departments were not spending in the original budget meant for MRRRP

that this important element will be accommodated.

ADV HOFMEYR: H'm, it would be accommodated out of the office of the Premier's budget, correct?

PROF MOKGORO: There was no office of the Premier budget. No office of the Premier budget in this, I think – I thought the model was clear, Chair. What happened at the beginning, the Premier ...[intervenes]

CHAIRPERSON: I am sorry, Professor Mokgoro, just pull the mic a little closer to you.

10 **PROF MOKGORO:** What happened was...

CHAIRPERSON: Yes.

PROF MOKGORO: What happened was, subsequent the State of the Province Address the Provincial Government that had the responsibility to give effect to the policy priorities contained in the State of the Province Address and with regard to Mafikeng as a capital town, a process developed where departments each had to contribute an amount of 10 million towards the realisation of the programmes in MRRRP . So once that had been done, the
20 department would in the broad policy of the Premier, departments had to put in projects or programmes that from the perspective of their mandates they would implement.

However, with the passage of time, the pace at which they were doing so was disappointingly slow and in

the course of this event of this process Community Safety and Transport Management, having identified within their own plans, the resuscitation and reinstating flights, approached Treasury and in their discussions they then recommended that the money that was being unused should then be used for purposes of resuscitation of flight.

CHAIRPERSON: I may have missed the earlier part of your response. So Ms Hofmeyr asked the question whether the position is not that if there is no funding for a project
 10 there should be no authorisation of payment and your answer or part of your answer was, as I understood it, not necessarily. Okay, is that right?

PROF MOKGORO: What I am saying, Chair, I say in this particular instance the accounting of the Department of Transport Management had been in discussion with Treasury about the need to resuscitate the flights but in their budget they had not made provision for that. So in their discussion with Treasury a proposal was made that since MRRRP was being under spent, they could then
 20 utilise these funds to provide for this need. That is what I recall.

CHAIRPERSON: So would your answer therefore be to that question that Ms Hofmeyr put to you as a general rule there should be no authorisation of payment in relation to a project whether there is no funding. In this case although

originally there may not have been funding available, special arrangements were made to ensure that there would be money that would be used to pay for this project. Would that be your answer?

PROF MOKGORO: My answer – yes, it will be – my answer, Chair, which simply means that the need identified in Community Safety and Transport Management was not inconsistent with the broad policy idea of revamping Mafikeng.

10 So through PFMA, adjustment and transfer of funds, a decision was taken that since in this area we are not spending as fast as we should, let us assist in this need of resuscitating air traffic.

CHAIRPERSON: But I guess the bottom line at least must be if there is no funding, you cannot authorise payment but if arrangements are made in terms of which maybe funds are moved from elsewhere to make funding available then you authorise and payment would be permissible.

PROF MOKGORO: Well, certainly, as I say, the
20 discussion was between Community Safety and Transport Management and between Treasury and Community and Safety Management about precisely the transfer of funds.

PROF MOKGORO: Okay.

ADV HOFMEYR: Chair, just before the break I would like to ask Prof Mokgoro just to consider one issue over the

break, if I may.

CHAIRPERSON: Yes, ja.

ADV HOFMEYR: That comes up directly from the engagement you have just had with Prof Mokgoro. Prof Mokgoro, despite all the efforts that you have made to put your statement together and the follow ups from the Commission about missing documents, I have not seen a single document that records this arrangement that you speak of where Community Safety and Transport
10 Management went to Treasury and got an authorisation of Treasury to take R50 million out of the office of the Premier and allocate it to these flight subsidies.

So I would like to ask you, I might have missed it, over the break if you could look through the file that comprises your bundle and let us know if you can find any document there that actually records – because it is a matter of financial discipline, is it not, that you should have documents recording when a R50 million swing is taken in relation to a budget. So please let us know after
20 the break if there is a single document you can find.

PROF MOKGORO: Can I just make a correction before we do so, Chair?

CHAIRPERSON: Yes, sure.

PROF MOKGORO: I think the evidence leader keeps on making reference to the funds of the office of the Premier

and I just want to correct this. There was no fund of the office of the Premier, this is money that was pulled from departments with the intention of revamping Mafikeng so that expenditure of any amount would be the responsibility of accounting officer that will be getting their department's project implemented.

CHAIRPERSON: I guess she is talking about the same money or funds, I guess, but the point you seek to emphasise is that the office of the Premier may have been
10 the custodian of those funds but those funds were to be used for the projects of the departments that had contributed to it. Is that putting it ...[intervenes]

PROF MOKGORO: No, every department contributed, Chair.

CHAIRPERSON: Everybody, yes.

PROF MOKGORO: Every department contributed.

CHAIRPERSON: Yes.

PROF MOKGORO: But departments were then invited – given the policy statement of the Premier...

20 **CHAIRPERSON:** Yes.

PROF MOKGORO: Come up with programmes. That is right.

CHAIRPERSON: Yes but once the money coming from different departments was in the office of the Premier, are you making the point that it was not – it did not constitute

budget of the Premier's office?

PROF MOKGORO: No, it did not.

CHAIRPERSON: It did not.

PROF MOKGORO: No, it did not.

CHAIRPERSON: Whose budget did it remain as? Did it remain as the budget of a particular department, did it remain as budget for different departments?

PROF MOKGORO: Well, it remained – effectively, at a practical level, it remained budgets of particular – of
10 departments that would have come up with projects.

CHAIRPERSON: Contributed.

PROF MOKGORO: In other words, you have pooled this money and Department of Public Works says we have a responsibility to patch potholes. They would then go through normal procurement processes and then make submissions to say we request funding for the following and all we had to do was to ensure that the project that was being submitted is consistent with the priorities outlined.

20 **CHAIRPERSON:** But if you can help me, I cannot remember whether this is dealt with in your affidavit, why would the departments have been asked to contribute money that would sit in the Premier's office, as it were, but money that would be used for different departments? In other words, why would the Department of Community

Safety for example not rather keep let us say its 5 million that it may have contributed because in the end even it if sends this money to the Premier's office it can only be used by that department and that department only, its portion. So why was it necessarily to bring this money to the Premier's office if that was the position?

PROF MOKGORO: Well, certainly, Chair, the situation was unusual.

CHAIRPERSON: Sorry?

10 **PROF MOKGORO:** The situation, that arrangement was an unusual one. That is unusual one and the questions that you are raising is the same question that we asked but the fundamental thing is, do departments remain accountable for what they draw given the projects that they had identified that had been approved under MRRRP?

CHAIRPERSON: Ja because it is strange to me. You see if, for example, the Premier's office had wanted to push certain projects but it did not have enough funds but the Premier had identified those projects as important or as
20 projects that should be given priority. I can understand a request or direction that gets sent to the various departments to say there are these special projects that the premier has identified that he particularly wants to be handled in his office.

Each department must contribute something in

order to make 50 million, for example, you know? So every department sends 2 million, 1 million according to their ability, or 5 million or whatever, whatever but once it is in the Premier's office it is not their money, it is now the money of the Premier's office and the Premier then uses it for the specific projects.

So but if the position, as I understand you to be saying, is that the – in the end each department will be deemed to – well spend this money that used to sit in their
 10 departments but has been moved to the Premier's office, they must spend it but the Premier's office is the one that authorises. It just seems strange, why do you not allow them to go on and spend it in the normal way if the Premier or the Acting DG must perform some oversight function, he continues to do so but the money stays with the various departments and if the department must account to the office of the Premier in terms of pace and expenditure or spending of that money, that is fine, that I can understand.

What I do not understand is why are you taking it
 20 away from them if in any way – in any event it will still be used by them? Ja.

PROF MOKGORO: Can I answer that question, Chair? Perhaps the question that you are asking is the question that the whole world is asking and I will tell you why, Chair. There is a concept of joined up government where the

...[intervenes]

CHAIRPERSON: Joined...?

PROF MOKGORO: Joined up. Joined up, yes, joined up. There is a concern increasingly and I am talking about governments throughout the globe where the question of silos is not effective in bringing about a collective approach to addressing matters of development. So countries throughout the world, they have tried various mechanisms to make sure that there is one government,
10 one budget with regard to programmes that have to be carried out.

So I think the puzzle is not only what you have just expressed but it is a global puzzle. Some countries have tried to address successfully this kind of problem, others have not.

You see, the PFMA in a sense contradicts the idea of government working together because what the PFMA describes is a vertical approach of accountability. You have an accounting office, you have a political principal
20 whose responsibility it is to account to the people who have elected him or her. You have an accounting officer who, amongst others, has to oversee the expenditure of funds in terms of the rules in the Act.

So the minute you want to have funding in a country like I think – not Australia, but – I think it is Australia,

probably Australia - New Zealand, at least. They call it me-tooism where government would say these are our priorities and we find, for instance, when we look at the priorities, there is virtually nothing that is given to agriculture and I am the Minister or the accounting officer for Agriculture.

Now if the principle of collectivism, I have no business to complain that I want to be there too, I want to be there as well, and that is where the concept of me-
10 tooism comes.

And as I say, governments are continually grappling – even in our country, we have a concept called district development models. The district development molecule – look at the documents – it talks about one district, one budget. What does it mean? It means the National government that implements in that particular province or the broader locality, the Provincial Government that implementing that locality, the local government that implements the locality must all work together to ensure
20 that let us leave our parochial interest and biases but address together this developmental need.

So I can understand the puzzle and I am equally looking for solutions to find a way in which we achieve that.

CHAIRPERSON: Okay, let us take the tea adjournment, it

is twenty five past eleven. We will resume at twenty to twelve. We adjourn.

ADV HOFMEYR: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us proceed.

ADV HOFMEYR: Thank you Chair. Professor Mokgoro before the break I asked you about documents relating to Treasury approval but I am going to come back to that in a
10 moment. I would like to just pick up a point that you made when you were engaged in a discussion with the Chair.

You see you made the point about the need for joined-in Government as I understand it, and as I understand your sworn statement part of the idea behind the MRRRP Project was to do just that, was to have a big project that could be run and managed by the Premier's Office, is that correct?

PROF MOKGORO: It could be run by government with the coordination being done by the Office of the Premier.

20 **ADV HOFMEYR:** Right and you were the accounting officer in the Office of the Premier?

PROF MOKGORO: I was the accounting officer in the Office of the Premier, yes.

ADV HOFMEYR: And you were then required to authorise any payments that were coming from funds that had been

placed with the Office of the Premier. Correct?

PROF MOKGORO: I was to authorise programs that the executive council had reflected on and satisfied itself that the department that is responsible for executing had actually done so and if you look at the minutes I am having there should be in the documents we submitted, that that is how it happened.

ADV HOFMEYR: We will look at the minutes in a moment Professor Mokgoro but I am interested in the question of
10 accountability because earlier on you made a statement that the PFMA is actually inconsistent with some of these joined-in Government initiatives. Did I understand your evidence correctly?

PROF MOKGORO: That is correct.

ADV HOFMEYR: But you will accept that the PFMA is principally concerned with accountability for spending, is it not?

PROF MOKGORO: That is correct.

ADV HOFMEYR: Right, and in accordance with the PFMA
20 you as the accounting officer in the Office of the Premier were accountable for any expenditure out of that office. Correct?

PROF MOKGORO: The accounting officer for community safety and the transport management was the accounting officer and that is why they had to do – the accounting

officer in community safety and transport management was accountable, the accounting officer for the R50million however EXCO having satisfied itself based on the reports of the MEC and if you look at the reports of the MEC they are signed by the accounting officer in the department at the MEC. It always happens in that joint, in that fashion. I as a coordinator Chair I keep on emphasising the point I was not the accounting officer for the MRRRP Fund.

The implementing department were the accounting
10 officers and they came to EXCO and satisfied EXCO that they had done the necessary processes and EXCO then would be comfortable that they had done their procurement in their department.

ADV HOFMEYR: But Professor Mokgoro the accounting officer in the Department of Community Safety and Transport Development is responsible for approving expenditure from its budget. Correct?

PROF MOKGORO: That is correct under normal circumstances, yes.

20 **ADV HOFMEYR:** And we saw that there was no budget whatsoever for the subsidies of these flights. Correct?

PROF MOKGORO: Yes, that is correct.

ADV HOFMEYR: Yes, and so they had to come to the Office of the Premier in order to get funds from the R132million that had been placed in the Office of the

Premier in order to pay R50million to South African Express Airways. Correct?

PROF MOKGORO: Provided that they satisfied the decision makers that it had gone through due process.

ADV HOFMEYR: But Professor Mokgoro somebody has to ultimately authorise the payment and that was you in this case, was that not?

PROF MOKGORO: Yes, because the project was one of the priorities and the reports from the MEC was that that it
10 actually had to go through due process.

ADV HOFMEYR: We will go to the report of the MEC in a moment but it is important that we understand who is accountable. Whose ultimately on the line for saying yes we will pay R50million to South African Express Airways and what I am putting to you Professor Mokgoro is because the R50million did not come from community safety and transport developments budget but came from the R132million that had been placed in the Office of the Premier's budget it was you who had to authorise that
20 payment. Do you accept that?

PROF MOKGORO: I do not Chair because there is a contradiction here. I mean if I am the accounting officer why should I be expected to be the one who was seeing procurement it does not make sense.

CHAIRPERSON: Well let me share with you what is going

through my mind about the issue and you can comment on it. What is going on in my mind is that an important principle of the PFMA has to be that an accounting officer is responsible for payments for the expenditure of the budget of his or her department because he or she can stop payments if he or she thinks this is not a proper payment she can stop those. But if she or he does not have the power to authorise the use of certain funds or does not have the power to stop somebody from using
10 those funds it is somebody else who has those powers then it maybe that it makes sense to say the one who has the authority to say, to authorise payment or to authorise the use of or the expenditure of those funds maybe it makes sense that that is the person who for purposes of those funds should be regarded as the accounting officer for those funds.

That is what is going on in my mind. What do you say about that and that I am sorry – and therefore the HOD for community safety for example may well have taken the
20 view that well these funds have now been taken away from my department and have been taken to the Office of the Premier therefore the ultimate person who decides whether to authorise the use of those funds is the acting DG. So that is the person who must make sure that before he or she, before he in this case authorises that he is satisfied

that all the requirements that should be in place have been satisfied. What do you say about that line of thinking?

PROF MOKGORO: Chair I thought I tried to explain that situation which in the context of the PFMA as it stands was an anomaly and I tried to explain it in the context of precisely what was happening in joined up-Government and I am saying it does not make sense and certainly these are the facts on the coordinator who is sitting in the Office of the Premier to be away from a process that starts with a
10 supply chain management from A to Z. And then through the political head of that department actually come to EXCO to say we have done the necessary. Where does the accounting officer who accounts nowhere but in the Office of the Premier?

Where does he fit in to suddenly become the accounting officer there I do not think it is truth it is unfair to impose that responsibility of accounting on the Director General's sitting in the Office of the Premier because the Office of the Premier would go by what the political
20 principle of that department is reporting and what the collective of government leaders are comfortable with that kind of report.

Almost like the person who is overseeing who is coordinating is the one that says based on what the MEC has reported and based on the submission which is signed

by the accounting officer in that implementing department and the political principle and they accept it as by EXCO, who am I to refuse.

CHAIRPERSON: In terms of the records that need to be examined by the AG or whoever, in terms of how for example those funds were used. I am now talking about the funds that came to the Office of the Premier being contributed by different departments. Do you know whether the Auditor General regarded the acting DG in the
10 Office of the Premier as being accountable for those or regarded the HOD of community safety as being the accounting officer for those, what was the position?

PROF MOKGORO: Chair the truth of the matter is that if you look at the past six years the best audit outcome that was produced was the accounting officer in question now because I produced an un-qualified audit outcome which is the second best to a clean audit.

CHAIRPERSON: No I understand that but my question is simply whether because now we are in 2020. The Auditor
20 General would have conducted there - they would have prepared there reports and so on. I am just wondering where they put this money, who they put this money under. Did they put it under the accounting officer in the Premiers Office or did they deal with it on the basis that it was under the HOD as the accounting officer or is that something that

you have not had a chance to check in the AG's reports?

PROF MOKGORO: I have not checked that Chair.

CHAIRPERSON: Yes.

PROF MOKGORO: But I would be surprised that the accounting officer in the Office of the Premier at the time would obtain an un-qualified audit outcome because that certainly would constitute irregular expenditure. But as I said that can be verified by going back to the documents.

CHAIRPERSON: Do you recall whether you yourself in
10 terms of whatever documentation you may have prepared for purposes of the Auditor General's work whether you put it under yourself as the accounting officer or whether you only sort of being accounted for other funds that would fall within the budget of the Premiers Office but not this particular fund because it needed to be dealt with under the different Heads of Department?

PROF MOKGORO: Chair I do not recall.

CHAIRPERSON: You do not recall.

PROF MOKGORO: But basic common sense would
20 suggest that it could not be that the person who started the value chain process should not be the one who accounts but the one who is coordinating and say based on what has been reported to EXCO and based on the decision of EXCO. It cannot be that suddenly the accounting officer for that activity becomes the one in the Office of the

Premier and that is the point that I have been trying to make.

CHAIRPERSON: Yes, Ms Hofmeyr.

ADV HOFMEYR: Thank you, Professor Mokgoro I would like to remind you of what you said in your sworn statement because the questions I am putting to you today are derived directly from your statement. So let us go to page 20 if we may of Exhibit DD32.1.

PROF MOKGORO: Page 20?

10 **ADV HOFMEYR:** 20, yes. You see at page 20 you explained to us precisely what the origins of the R132million were and you explained to us precisely why it was that the R50million was authorised from that R132million. Let me take you first to paragraph 53 on page 20. At paragraph 53 of your sworn statement you say:

“I have already indicated that funds were placed in the Office of the Premier for this project amounted to a R132million.”

20 This project – there is a reference to the MRRP, correct?

PROF MOKGORO: Yes, right.

ADV HOFMEYR: Right, so here you are saying that there were funds placed in the Office of the Premier for a R132million. Have I understood that correctly?

PROF MOKGORO: Ja, as it stands.

ADV HOFMEYR: Yes, and then if you go down to paragraph 55 you say:

“I have read the transcript containing oral evidence of Ms Phatudi relating to my role in the payment of an amount of R50million to SA Express. From the outset I admit that the amount was paid from vote 1 which belongs to the Office of the Premier to South African Express.”

PROF MOKGORO: That is correct.

10 **ADV HOFMEYR:** And then you go on at paragraph 56 and you say:

“First I need to state that the payment of the said amount was made from the funds that were for the MRRRP project.”

That was the amount of the R132million that I referred to earlier as appearing on page 5 of that submission that we looked at, right. So I understand Professor Mokgoro you to be saying on this page first that there were funds contributed from various departments comprising of
20 R132million placed in the Office of the Premier. Correct?
If you will just say yes because the transcript does not pick up a head nod.

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: You then confirmed that the R50million that was paid to SA Express was paid from that

R132million. Correct?

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: And that was – it was paid from what is called vote 1 which belongs to the Office of the Premier. Correct?

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: You were the accounting officer in the Office of the Premier. Correct?

PROF MOKGORO: Yes, Chair.

10 **ADV HOFMEYR:** You had to authorise that payment of a R50million. Correct?

PROF MOKGORO: The authorisation followed a process of procurement in the Department of COSATMA.

ADV HOFMEYR: Yes.

PROF MOKGORO: And they came to the MEC and the accounting officer came to the executive council and assured the executive council that all processes had been complied with and in fact before they came in a previous meeting, they had actually been informed by EXCO go and
20 do the normal process.

Now let me deal with the question of vote 1. My recollection as I said here Chair is that surely the money has to be kept somewhere for this purpose and why should it be reimbursed because a purpose had been identified, a purpose that had a collective, a collective approach. I

insist Chair that it cannot be true that I was the accounting officer for this amount where procurement was happening elsewhere...[intervene]

ADV HOFMEYR: But...[intervene]

PROF MOKGORO: Based on what was reported.

ADV HOFMEYR: But Professor Mokgoro the HOD of the Department of Community Safety and Transport Development came to you to authorise the payment because they had no budget for it. The budget was sitting
10 in the Office of the Premier that is what the document showed you they not.

PROF MOKGORO: Chair I repeat the department was given instructions to go and do the necessary processes and come back to EXCO and report and once EXCO was satisfied that due process had been followed the money had to be released.

The money had to be kept somewhere and because of a collective approach to delivery and the accounting officer in the Office of the Premier who is doing the
20 coordination cannot suddenly be the one who gets the – who is the accounting officer for that amount. And I want to insist why should we have somebody do – actually the entire processes which is prescribed in the PFMA other than the accounting officer of the Premier. I think that is a question that should be raised.

ADV HOFMEYR: Yes, but...[intervene]

PROF MOKGORO: That is the actual point I am making. I was not the accounting officer otherwise I am the one who should have gone through the procurement processes.

ADV HOFMEYR: But should you not have said that when they approached you with the invoice from SA Express should you not have said then this is not for me to authorise, I know nothing about the procurement process. This is happened in your department; you should be
10 responsible for it.

PROF MOKGORO: No, Chair because all the boxes had been ticked the money had to be released.

ADV HOFMEYR: Well none of the boxes were ticked Professor Mokgoro I would like to take you to why I say that if I may. Let us look at what EXCO decided on the 3rd of December 2014 because you have made reference to the minutes of that meeting previously and I said we would come to it. You will find it at page 92 of Exhibit DD32.1.

PROF MOKGORO: 92?

20 **ADV HOFMEYR:** Yes. Professor Mokgoro I understand your sworn statement to say that you were – were you present at this meeting; I do not think you were present at this meeting. Is that correct? But you obtained the minutes afterwards let me just get my notes if you will give me a moment. Yes, you say in your statement at

paragraph 61, what was presented to EXCO – I will just read it to you do not need to go there but just so that we are clear.

“What was presented to EXCO of which I was not in attendance on 3 December 2014 is reflected in the minutes which you then attached.”

So can I just confirm you were not in attendance at that meeting, is that right?

PROF MOKGORO: Chair I cannot recollect but remember
10 I am the secretary to EXCO even if I was not in that meeting the minutes would be written and if there is a fact such as the one that is being dealt with here that this was presented why should I refute that simply because I was not in the meeting.

ADV HOFMEYR: No, I am just – I tell you why it is going to be important Professor Mokgoro I do not understand what these minutes reflect at all I need to be frank with you. They do not make any sense to me so if you were present in the meeting, I was going to ask you to assist us
20 in understanding. But do I understand the position to be you were not present so you would not be able to assist us with what was being discussed?

PROF MOKGORO: I would have to check the records as to whether or not I was in that meeting and the possibility exist that I was not.

ADV HOFMEYR: Okay your sworn statement says you were not. Do you think you checked it before you did your sworn statement?

PROF MOKGORO: I should have; I should have yes.

ADV HOFMEYR: So can we take it for today that you were not present?

PROF MOKGORO: Ja, well as reflected in my statement.

ADV HOFMEYR: In your sworn statement right. So you would have then just been working with the minutes that
10 we are working with now. Correct?

PROF MOKGORO: Can you repeat that question Chair.

CHAIRPERSON: In other words Ms Hofmeyr is saying if you were not present at that meeting as to what transpired at that meeting you would have based, you would have looked at the minutes to say this is what was decided and these are the reasons if there are reasons given. So whatever you did would have been based on your understanding of the minutes.

PROF MOKGORO: Yes, Chair.

20 **CHAIRPERSON:** Okay.

ADV HOFMEYR: Thank you Chair I am indebted. Okay let us look at what is reflected on this minutes, in the minutes of this meeting on the 3rd of December 2014. You will see that there is a topic new items number 3, 3.1 says:

“Proposed introduction of schedule flights for

Mafikeng and Pilanesberg airports. It reflects that the matter was tabled by the MEC for community safety and transport management and during the discussions the following issues were raised”.

Can I just stop there; do I understand your evidence correctly to be you did have sight of these minutes of the meeting that occurred in December 2014 before you authorised the payment in March of 2015. Is that correct?

PROF MOKGORO: Ja, that is correct.

10 **ADV HOFMEYR:** Okay, and do you remember reading these minutes?

PROF MOKGORO: I could have read the minutes, yes.

ADV HOFMEYR: Because previously you kept emphasising if I say in fairness to you Professor Mokgoro that you were relying on EXCO’s decision to approve this, is that right?

PROF MOKGORO: Yes, having relied on the political head and the accounting officer of the department.

ADV HOFMEYR: Correct and do you see that reflected in
20 these minutes. So let us look at what these minutes say the minutes say that there was a discussion and then there is a first bullet. It says the following:

“This submission - now that is a reference to the submission from the MEC for the community safety and transport management. The submission talks

about making use of only one service provider. It was explained that the reason is because there would only be one service provider rendering a service between Mafikeng and Johannesburg. If other service providers were available, it would certainly have been against the rules of the Competition Commission.”

Let just stop there. Can you tell me what that means?

PROF MOKGORO: No, I would have to check what that
10 means but my understanding has always been that because of the restriction in this industry that was the reason why that they decided to appoint four out of those which was submitted. But again, going through the minutes Chair one would see that one of the considerations was the fact that this would have been a government to government transaction and that has always been my understanding. That was one of the factors that made the MEC to reach the decision.

ADV HOFMEYR: Okay we will come to the submission in
20 a moment because your absolutely right in fairness to you Professor Mokgoro the only reason that was given by the MEC for community safety and transport management for selecting South African Express that was going to require a subsidy in tens of millions of rand's more than the other airlines was because it was a government entity and

therefore not profit driven.

So your memory is correct in that I am going to interrogate whether that could ever be a good reason to go with the most expensive presentation. But for present purposes you agree with me this does not make sense what is reflected in bullet 1. Is that right?

PROF MOKGORO: Ja, it is.

ADV HOFMEYR: It is absolutely nonsensical.

PROF MOKGORO: Right.

- 10 **ADV HOFMEYR:** It says something about you have to go with one provider because there is a service between Mafikeng and Johannesburg because otherwise the rules of the Competition Commission will be breached. Do you agree with me we cannot understand what that means?

PROF MOKGORO: That point to me of the Competition Commission does not make sense to me Chair but as he reported that they went through a process I think it will be impossible to expect more than one service provider to be appointed.

- 20 **ADV HOFMEYR:** Oh indeed you go through a process in order to select your preferred service provider do you not what we have uncovered in the evidence is that there was no process that proceeded that selection that would ever qualify as a proper procurement process.

What there was were six airlines invited to Sun City

to make proposals we do not know on what, we know that they came up with varying ideas about what to do with the airports and we know that the single reason given by the MEC for going with South African Express Airways was because it was a government entity that was not profit driven. Correct? If you will just say yes so that we will get it on the record, you cannot nod.

PROF MOKGORO: My apologies.

ADV HOFMEYR: Thank you Professor Mokgoro. Okay so
10 we do not understand the first bullet right. The second bullet says:

“The office of the Premier MEC for community safety and transport management and MEC for finance economy and enterprise development should meet to address the issues raised by the Minister of Transport.”

Now that is one of the areas where we do not have clarity Professor Mokgoro because we ask for some of the annexures that were attached to the submission of the
20 MEC that preceded this meeting and there is a reference there to the Minister of Transport at the time raising some issue and it needing it to be addressed but we have never been able to obtain those annexures from your office. We were told yesterday they cannot be found. Can you add any greater insight on what the issue was from the Minister

of Transport?

PROF MOKGORO: Firstly Chair I do not have any recollection as to what the reason was nor do I know whether or not that meeting took place.

ADV HOFMEYR: Thank you. Let us go to then to the fourth bullet down. It says:

“The HOD should have done a thorough analysis of all presentations received to outline what it means financially to the province to subsidise the Mafikeng
10 OR Tambo route 100%. Consider all options and propose best options for consideration by EXCO.”

Professor Mokgoro I read that as a criticism of what the HOD had done and what the HOD should have done. Do you read it in the same way?

PROF MOKGORO: Chair I am not quite sure but one possible implications to what is standing here is to say could mean yes we proceed because we assume that the HOD should have. Another way you use this expression is to say you have not done it you should.

20 **ADV HOFMEYR:** “The HOD should have done a thorough analysis because they want to understand what it means financially for the province to subsidise Mafikeng or the OR Tambo route at a 100%.”

Are you saying that can be read to say he did do a thorough analysis?

PROF MOKGORO: No, all I am saying Chair is I do not have recollection however purely on an interpretation if reading this it could mean that we assume that this had been done and maybe that is why the use of should have or it could mean the context could be different to say he has not done it.

CHAIRPERSON: Well I am not sure whether there is room for the interpretation that says we assume he has done this or she has done this because when the sentence says:

10 “The HOD should have done a thorough analysis of all presentations of sealed. So applying what it means financially for the province to subsidise the Mafikeng or OR Tambo 100%.”

It seems clear to me that if this is what was said what was the point being made was they did not do this. That is as I see it but I may be missing something. I do not seem to – to think there is room for an interpretation that says they were under the impression that the HOD had done this exercise that they are talking about.

20 **PROF MOKGORO:** Chair perhaps the – the best way to resolve this is to read this together with other documents.

CHAIRPERSON: Sorry.

PROF MOKGORO: Perhaps the best way to resolve this is to read this with other documents such as the presentations by the MEC to EXCO.

CHAIRPERSON: Yes.

PROF MOKGORO: Accepted by the HOD.

CHAIRPERSON: Yes. But somebody who reads the – these minutes without the benefit of any other document my impression would be that the meaning that they would attach to that sentence is that it was being said that the HOD did not do this exercise that is referred to in the sentence. That is how I see it. Would you still maintain that you think the other interpretation is a possible interpretation as well?

10 **PROF MOKGORO:** Chair I do not have any stubborn view about that. All I am..

CHAIRPERSON: Yes.

PROF MOKGORO: Encourage the commission to do is to read this.

CHAIRPERSON: Yes.

PROF MOKGORO: Together with other documents.

CHAIRPERSON: Yes.

PROF MOKGORO: And that is the best way to – to shed the light on this.

20 **CHAIRPERSON:** Do you have a recollection as to how you understood it when you looked at these minutes some – maybe at the time – the first time you – what your understanding was of this or is the position that you cannot recall what your understanding was?

PROF MOKGORO: Perhaps without – with respect Chair

without restricting myself to what is being stated here.

CHAIRPERSON: Yes.

PROF MOKGORO: There is documents that I have gone through actually.

CHAIRPERSON: Yes.

PROF MOKGORO: State that the MEC reported that they have gone through process.

CHAIRPERSON: Yes.

PROF MOKGORO: Exactly.

10 **CHAIRPERSON:** Yes. So you say other documents that you would have read ...

PROF MOKGORO: Such as minutes of ...

CHAIRPERSON: Yes.

PROF MOKGORO: Other meetings of EXCO.

CHAIRPERSON: Suggested that the HOD had done this exercise.

PROF MOKGORO: My – my knowledge has always been that the HOD had done that exercise.

CHAIRPERSON: Yes and you say...

20 **PROF MOKGORO:** And the MEC reported on the explanation.

CHAIRPERSON: Explained on other documents that you were aware of.

PROF MOKGORO: Yes Chair.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Professor Mokgoro I – in fairness to I agree that it is helpful sometimes to read things in context and against the other documents. Let us look at the next bullet because the next bullet I want to suggest to you confirms the interpretation that I understand both the Chair and I have of the bullet that we were concentrating on. You see the bullet we were concentrating on says:

“The HOD should have done a thorough analysis.”

10 The next bullet says:

“There should also have been a marketing strategy in place.”

I want to put it to you that those two together make it absolutely clear that what is happening in these two bullets is a criticism is being made of the extent to which the submission analysed key things and included key things.

The first bullet we looked at says:

20 “There should have been a thorough analysis of the financial implications of paying 100% subsidy for the flights between Mafikeng and OR Tambo.”

And the second bullet we are looking at says:

“There should also have been a marketing strategy in place.”

Do you disagree with that reading?

PROF MOKGORO: Chair what I recall is that part of the exercise was a quick survey that was done among public servants and the need to settle between Gauteng and the North West. That was one of the determinants in terms assessing whether or not there was a need for that. So that it cannot be entirely true that the marketing strategy was not used and that is why my suggestion Chair is this must be read together with other documents.

CHAIRPERSON: But do you take issue with Ms Hofmeyr's
10 interpretation of those two bullet points on the basis that you say you read them – you read these minutes in the context of other documents and therefore your understanding of these minutes is different because of those other documents?

PROF MOKGORO: At a literal and face value I do not take issue with that.

CHAIRPERSON: Ja.

PROF MOKGORO: But my suggestion is that that – let us broaden and look at other documents.

CHAIRPERSON: Ja.

20 **PROF MOKGORO:** Because it could just be an interpretation that we have here.

CHAIRPERSON: Yes. So I guess you might be saying reading this alone you would have no issue with Ms Hofmeyr's interpretation but reading it together with the other documents that you are talking about that you say you

were exposed to made you – or gave you a different understanding.

PROF MOKGORO: Yes Chair and that is why my reading of this is EXCO was probably ticking the boxes to make sure that things have been done.

CHAIRPERSON: Okay Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. It is then what is resolved on that page that causes some concern to me and it is actually a point Chair that you took up with Ms Phatudi
10 when she gave evidence because what is resolved there seems mutually inconsistent. Let us look at what was resolved. So A says EXCO agreed that the department should proceed with the chosen service provider and sign the contract SA Express. And then B says the submission should serve again on 15 December 2014 with a proper analysis of the presentations and options for consideration by EXCO. Does that not strike you as inconsistent PROF MOKGORO? You recall that.

CHAIRPERSON: Now I remember.

20 **PROF MOKGORO:** Yes.

ADV HOFMEYR: Yes.

CHAIRPERSON: Yes now I remember yes.

ADV HOFMEYR: How can you decide to go with SA Express and tell the department to conclude a contract if you are also saying to the department you need to come back to us in

about two weeks' time...

CHAIRPERSON: With this analysis.

ADV HOFMEYR: And do your proper analysis.

PROF MOKGORO: Yes again one possibly interpretation was to say we seem to be persuaded in this particular direction but for us to be certain about the decision we are making I am not acting on behalf of EXCO I am also doing some interpretation here it could mean that for us to be absolutely sure you must come back again and clarify the
10 following.

CHAIRPERSON: But if that is the position why would EXCO make the decision reflected in paragraph [a] under resolved facts if there was still an analysis that they wanted to look at.

Why not defer a decision until you have seen that and then make a decision? What is going to happen if – if afterwards you have already said the department must conclude the contract then – and the analysis that came – comes later suggest that actually there should be no
20 conclusion of a contract because of what the analysis reveals.

So in other words, I am saying if you as EXCO appreciate that you need to see a certain analysis relating to this matter why do you not defer your decision until you have seen that?

Why do you say to the department you must proceed with your chosen service provider and sign the contract because after that the HOD of the department would be entitled the following day to sign the contract with the – with the service provider – chosen service provider? But EXCO still says bring an analysis in two weeks' time. For what point; what purpose?

Because if that analysis reveals that actually there should not have been a contract signed you have already
10 signed and you have authorised the HOD you cannot – you cannot blame the HOD because you authorised – said he must go ahead. He acted in compliance with the resolution of EXCO. So what – what was going on? It is strange.

PROF MOKGORO: Yes Chair with respect I wish EXCO was sitting in the seat that I am occupying now.

ADV HOFMEYR: But Prof Mokgoro you read these minutes as I understand it and you relied on EXCO's approval based on the MEC and HOD's submission when you decided to authorise the payment, is that correct?

20 **PROF MOKGORO:** Yes and I relied on the entirety of submissions to EXCO and ultimate EXCO's decision and mine was to get out what they had decided.

ADV HOFMEYR: And you did not pick up this contradiction then when you read the minutes?

PROF MOKGORO: As I say at face value there is a

contradiction and I kept on referring the commission to taking a totality view of – by reading all the documents that are here.

ADV HOFMEYR: Yes let us go to the only other document that was presented to EXCO at that meeting. There is one other document it is the submission that was prepared by the HOD and the MEC. Apologies it was prepared by the MEC and signed off by the HOD as well. You will find that at page 81 of DD32.1.

10 So just to place this document in context Professor Mokgoro this is the submission that you have highlighted in your sworn statement as having been presented to the Executive Council. You will see at page 81 it is addressed to the Chairperson of the Executive Council the Council former Premier Mago Mapelo and it is from the MEC for Community, Safety and Transport Management and that was Mr Molopisi at the time. If you go to the last page of the document which is page 90, 90 you will see it is also signed by Mr Mathla Koleng who was the HOD of that department.

20 **PROF MOKGORO:** Page what Chair?

ADV HOFMEYR: 90, 90.

CHAIRPERSON: 90?

PROF MOKGORO: 90?

ADV HOFMEYR: Yes. You have that?

PROF MOKGORO: I have got it Chair.

ADV HOFMEYR: So it is signed off by HOD and MEC and the front page indicates it is a document that the MEC places before EXCO as we saw in the minutes. Is that correct?

PROF MOKGORO: That is right.

ADV HOFMEYR: Right. So in our investigations this is the only other document which could give context to what was decided on the 3 December. We have asked for all documents related to this decision to procure the services of SA Express. This is all that came up and this is all that you
10 refer to in your sworn statement as well.

So I want to look at what this document tells us about a proper procurement process having been followed. Because your evidence has been you had been under the impression that proper procurement processes have been followed. Professor Mokgoro I have looked in this document for some indication that proper procurement processes were followed and the only thing I found is at page 82. Can you turn to page 82 please? Page 82 under paragraph 4 there which is headed Process to activate the airports says the
20 following:

“The department invited six potential airliners to submit and make presentations. Of the six service providers invited only four presented their proposals as requested and the other two were advised to finalise their proposals

and forward them to the department but were never received.”

That is the sum total about process. It is not a process like the process that Ms Phatudi went through when she was later asked to authorise the payment to the Management Company appointed under the agreement between South African Express Airways and the North West Government.

I do not suggest we need to go there but Chair you will recall and if you want me to take you there I can
10 Professor Mokgoro but she had a long departmental check list for the procurement process. That is a sheet where you tick off – you know earlier you said you need to tick off that the process was followed.

And it goes through stage 1, stage 2, stage 3, stage 4 which ends up with budget control and all the responsible members have to say we went through this stage, yes we went through that stage, specification, adjudication etcetera. There is not even a mention of a check list having been followed here, is there?

20 **PROF MOKGORO:** No it is not mentioned here.

ADV HOFMEYR: There is not a mention that there was a bid proposal that was submitted, is there?

PROF MOKGORO: Well I do not know what precedes this submission to EXCO. I think it would be useful to see precisely what happened apart from what is stated as of.

ADV HOFMEYR: But this is all that served before EXCO.

PROF MOKGORO: That is correct.

ADV HOFMEYR: And this is the only document that the department has indicated to us exists in relation to this topic. So I want to put it to you that you were also relying only on this document then. And if you were only relying on this document Professor Mokgoro how could you have been satisfied that a proper procurement process had been followed?

10 **PROF MOKGORO:** Well Chair I acknowledge that this is all that is stated here. I do not recall seeing submission to EXCO with the entire detail of procurement process would be included in a submission to EXCO.

ADV HOFMEYR: So there was nothing else and all that happens after that short paragraph.

CHAIRPERSON: Well maybe – maybe Ms Hofmeyr. You see Premier when under paragraph 4 at page 82 the one we are dealing with says – the heading says Process to activate the airports and that seems to be the only paragraph in the
20 document that has a heading saying Process.

Once you have read that would it not be fair to expect that it would strike somebody who expected that a normal open tender process would have been followed? It would strike him that there was no mention of such a process under this paragraph and therefore that would make the reader to

enquire more to say, why is there no mention of any procurement process under this – it did happen?

What do you say to that thought? That somebody who expect – who expected that for this kind of project there should be an open tender process when they come to this paragraph which is headed Process to activate the airports and finds that there is no mention of any open tender process that should have raised red flags to say I need to find out. Why is there no mention – was it followed?

10 **PROF MOKGORO**: If – if Chair if I – my recollection serves me well in my engagement with the HOD he mentioned something like because of the route and because of the profitability when you take a total list of airlines it only makes sense that these are the possible – these airlines would possibly qualify for that and I could be wrong in my recollection. But certainly when one looks at this – that question would arise.

CHAIRPERSON: But maybe one should clear something that maybe should have been cleared earlier. Am I – am I right to
20 assume that based on your knowledge of government processes in terms of procurement and so on am I right to assume that your expectation for this kind of project would be that an open tender process should have been followed unless there were good grounds to deviate from it in which case then whatever deviation would have had to happen

within the terms of the law.

PROF MOKGORO: Unless.

CHAIRPERSON: Yes ja.

PROF MOKGORO: [Mumbling].

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you Chair. Professor Mokgoro I would like your comment on the following. You see the HOD whom you have indicated to the Chair in answer to his question now who indicated to you that it made sense to just
10 approach the six airlines because they were the ones who were available in the market is the very same HOD who was implicated in the evidence of Ms Tlatsana as having received some of the funds that were paid out from the North West Government. Were you aware of that evidence previously?

PROF MOKGORO: Well certainly I never suggested that what the HOD said was reasonable. I am just saying I am just referring to a recollection of what he said to me and I am not passing any value judgment on that.

ADV HOFMEYR: You see the – the reason why you would
20 want check lists I put it to you the reason why you would want processes to be followed is precisely to prevent situations where people for ulterior purposes are seeking to advance contracts with certain service providers so that they can enrich themselves. Is that not so?

PROF MOKGORO: Chair on a daily basis the Director

General in the office of the Premier does not enter into nitty gritty processes of departments. And that is why in the course of [00:19:17] where initially you had one Accounting Officer across all government departments. The arrangement was changed where each department must have a – an Accounting Officer and the Director General then became the Accounting Officer only in the office of the Premier.

ADV HOFMEYR: But you did – have said previously
 10 Professor Mokgoro that in order to be satisfied to authorise this payment one of the things you would have taken into account is whether proper processes were followed, correct?

PROF MOKGORO: I said the MEC for department as well as the HOD assured the Executive Council that processes had been followed and I want to emphasise once more. My responsibility was not to get into the nitty gritty. The MEC must have satisfied himself that the report that the HOD – his HOD gave him was authentic. And the MEC is expected to have the necessary integrity that when it comes to EXCO
 20 and present this report this report – that it will be accepted and indeed EXCO accepted it. And I really think that what Ms Hofmeyr is asking me is probably in the [00:20:35] of the HOD of that department. Who was tasked with the responsibility of doing precisely what she is asking with respect?

ADV HOFMEYR: But Professor Mokgoro you have just given evidence that says that the MEC assured EXCO the Executive Committee that proper process has been followed. Did I understand your evidence correctly?

PROF MOKGORO: Yes and it is in black and white Chair.

ADV HOFMEYR: Well this is not Professor Mokgoro with respect because the only paragraph dealing with process says nothing about a proper process having been followed. And the only other document you were relying on when you
10 authorised the payment was the minutes that again say absolutely nothing about process if anything the minutes reflect that the members of EXCO were concerned that a proper analysis had not been done. Against those facts Professor Mokgoro how could you have been satisfied that EXCO was satisfied that a proper process had been followed?

PROF MOKGORO: Perhaps what we need to do Chair because some of the documents that I have gone through certainly point out that the MEC made this presentation
20 assisted by the HOD and that is how the decision was taken.

CHAIRPERSON: Are you saying that there is a document or there are documents that might not be here in this bundle which were to the effect or was to the effect that the MEC had assured EXCO that there had been compliance with procurement processes in effect?

PROF MOKGORO: Yes Chair I actually would have – would like the opportunity just to go through the bundle that I have been using all the time.

CHAIRPERSON: Oh to see if you can find those documents.

PROF MOKGORO: Yes. I think I should be able to do that.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: Chair I – absolutely if Professor Mokgoro can assist us but I would just like to be clear about the fact that this has been an extensive investigation that the
10 commission has done for more than two years. We have asked for all the relevant documents and nothing more than what is in your bundle has been produced. But if there is more we happily would like to consider it certainly. I just want to then go to the motivation that was given in the submission for selecting South African Express right because it is one of the things that clearly served before EXCO and which I understood your answer earlier to be we must consider what EXCO is recorded as having discussed and decided in the light of what was presented to it. Right. Now
20 what this submission does is it talks about those four airlines from whom presentations were received. Do you recall that Professor Mokgoro?

PROF MOKGORO: I recall that.

ADV HOFMEYR: Right. And what it ends up – I am going to summarise just in the interest of time and if you disagree

with any part of it please let me know. But what ends up happening is SA Express is identified as the preferred service provider and the reader of the submission EXCO is told that is going to cost the North West Government R110 million up front for the first year. Do you recall that?

PROF MOKGORO: Yes I recall that.

ADV HOFMEYR: It is going to be five year contract so R110 million is only in year one and over the successive years that amount will diminish to some extent but it will be a full five
10 year commitment, correct?

PROF MOKGORO: Yes Chair.

ADV HOFMEYR: And it was being compared with for example Continental Aviation Solution who is the second airline whose presentation is considered. And what Continental Airline Solution was proposing was a sort of phased in approach where you would start with certain routes and then you would add routes and you would eventually get to Mauritius and Seychelles in the third phase apparently and do you recall what they were going to charge
20 the North West Government for their proposed revamp of the airports?

PROF MOKGORO: No I do not recall Chair.

ADV HOFMEYR: Well you will find it at page 86. They were going to charge the North West Government R4 397 725.00. You will find it at page 86. It is sort of midway down. It

says:

“The proposed start-up funding is estimated
– I accept estimated – at R4 397 725.00.”

Do you see that?

PROF MOKGORO: Yes I have Chair.

ADV HOFMEYR: So the first thing that strikes me is that
when the HOD and the MEC were evaluating these
presentations and presenting this to EXCO; EXCO had
before it a summary of the presentations that put R110
10 million as year 1's cost as compared with R4.7 million.
Right. Do you agree with me that you would need some
convincing to go with the R110 million rather than the R4.7
million?

PROF MOKGORO: Yes I agree with you.;

ADV HOFMEYR: And do you want to know what the only
reason is that was given for going with SA Express rather
than any of the providers?

PROF MOKGORO: I have no idea Chair.

ADV HOFMEYR: Well let us find it. It is at page 87. The
20 single reason that was given under paragraph 6.

PROF MOKGORO: Yes.

ADV HOFMEYR: For the proposed service provider is the
following:

“Based on the above proposals the SA
Express was found to be relevant to meet the

Provincial Air lift strategy based on the fact that it is a state owned entity and not profit driven while SA Airlink, Continental and Challenger Airlines will be highly dependent on government for profit making.”

Do you see that?

PROF MOKGORO: Yes I see that.

ADV HOFMEYR: That was the point you made earlier was it not that your understanding was there was a particular
10 preference for SA Express because it was a government entity, is that right?

PROF MOKGORO: I said I recall that that was one of the considerations.

ADV HOFMEYR: Hm. Well did you give any thought to interrogate that reason as being the one to go for R110 million rather than R4.7 million?

PROF MOKGORO: The point about you know a government system Chair is that you have departments and as I said repeatedly each department with its Accounting Officer and
20 the responsibility of the Director General is to assist the Premier in his or her constitutional responsibilities to coordinate administration. And in terms of this principle the nitty gritty accountability responsibility lie with the HOD. And certainly the – every other day you would find things that do not make sense that happen in departments and what

normally happens is that internal audit would be the one to pick up some of these anomalies – some of the things that do not make sense.

ADV HOFMEYR: So do I have it as your evidence that it does not make sense?

PROF MOKGORO: Yes it does not.

ADV HOFMEYR: It does not make sense that you would go with R110 million.

PROF MOKGORO: It does not.

10 **ADV HOFMEYR:** Rather than R4.7. Thank you Professor Mokgoro. Let us then finally move if we may...

CHAIRPERSON: Of course I am sorry – of course Premier if you read documents and there is – there are decisions to be made whether to go with A or B in a situation such as this and you find that going with A would mean that the department would pay a substantially low amount than going to B even if something like that that might be an issue relating to a certain department I think that if you have something to do with it you would immediately say, hang on

20 did you really see what is going on here? Did you really see that you are going to make the government pay R96 000.00 rand more for the same service that you can get for – the government can get only for R4 million. You would say, no but there is something not right. HOD please tell me. Even if the HOD did not report to you but if you see that because

you would be concerned about why should government pay so much money when it can save so much money by going to – going that route? That would be my thinking that it is so vast – the difference so vast that you would think no, no, there must be something wrong – there must be something that they did or there's something wrong with this document. It cannot be that the one is 4 million, the other one is 100. And you would want somebody to just help you understand. Do you think I am expecting too much from somebody who is
10 in the particular department?

PROF MOKGORO: Whether or not, that will change the situation. I expect any response will lead to ask that question.

CHAIRPERSON: Yes, yes.

PROF MOKGORO: And I think it is one of the reasons why I would have had a discussion with the HOD.

CHAIRPERSON: HOD. Yes.

PROF MOKGORO: And as I have said earlier, Chair.

CHAIRPERSON: Yes.

20 **PROF MOKGORO**: When you find yourself in a situation where you are a secretary and not a decision maker, almost at every meeting, there would be a matter that you differ with.

CHAIRPERSON: H'm.

PROF MOKGORO: But there are decision makers that make

those decisions.

CHAIRPERSON: H'm, h'm.

PROF MOKGORO: And that is why, with respect, I said earlier, I wish Exco was sitting where I am sitting.

CHAIRPERSON: H'm, h'm. But of course, I would imagine that where it was going to be your signature that would authorise payment that would basically give effect to this choice and you saw something like this and it did not make sense to you, you would be entitled to refuse to authorise
10 until you are satisfied.

PROF MOKGORO: Chair ...[intervenes]

CHAIRPERSON: You would not want somebody to say: How could you authorise it? You should have refused in the light of this until you were satisfied that there was sense. This did not make sense. It could not have made sense to you.

You would not want to authorise payment because if somebody later on brought this document to say: Did you read this document? You say yes Did you see this? Yes, I
20 saw it. Does it make sense to you? No, it does not make sense. Why did you authorise? Then you do not have an answer.

PROF MOKGORO: Chair, in my career, I have always insisted, even today, at least Treasury and a legal advisor would advise before I append my signature.

If you have a situation where information before you as involved discussions between the accounting officer and Treasury, you would tend to be satisfied that certain(?) things have been looked at.

But I agree, it does not make sense.

CHAIRPERSON: Thank you. Ms Hofmeyr.

ADV HOFMEYR: Thank you. Professor Mokgoro, I said I was going back to the question I posed before the break, which was, whether there were any documents, that
10 evidence that confirmation that Treasury gave that the funds could be expended. Were you able to find any documents?

PROF MOKGORO: I cannot recall finding such a document.

ADV HOFMEYR: H'm.

PROF MOKGORO: But it would come as no surprise if... In fact, talking to Treasury recently that there was a discussion as to ensure that what I recall was in fact true. That there was a discussion between Treasury and the accounting officer in department itself.

ADV HOFMEYR: H'm.

20 **CHAIRPERSON**: Your voice went down, Prof.

PROF MOKGORO: I recall and did recently, I did have discussions with Treasury as to why did we arrive at this. And I was reminded, once more, that it was because of under expenditure by other departments and then a process was put in place to appeal to Treasury and Treasury advised that

unspent funds should be utilised.

ADV HOFMEYR: But Professor Mokgoro, should you not have asked to be shown evidence of the alleged under spending? And I ask that because you will remember, you put that document together on the 28th of October 2014.

PROF MOKGORO: Yes.

ADV HOFMEYR: You identified precisely how the R 132 million placed in the Office of the Premier was going to be allocated. And you confirmed in your evidence today
10 fairly that the Mafikeng Airport subsidy, Pilanesberg Airport subsidy played no part in that allocation, correct?

PROF MOKGORO: Yes, I certainly knew myself, right from the outset, that the money was wilfully and for the entire rebuild of Mafikeng but my understanding of that was, at least being the process.

ADV HOFMEYR: Yes, but you took money out of a budget of R 132 million that was going to be spend on other projects, to spend it on a subsidy to SA Express for flights to airports.

20 **PROF MOKGORO:** Chair, that was not my priority. That was not my decision.

ADV HOFMEYR: Well, it was ...[intervenes]

PROF MOKGORO: But I have this point repeatedly.

ADV HOFMEYR: No, Professor Mokgoro. In fairness to you. You are the person who authorised the R 50 million

being paid, correct?

PROF MOKGORO: Authorise is not the same thing as what an accounting officer does in terms of the expenditure. Treasury has had discussions with transport management who have made submissions to Exco. Exco has decided that this fund must go there.

CHAIRPERSON: Sorry ...[intervenes]

PROF MOKGORO: The accountability ...[intervenes]

CHAIRPERSON: No, no. Premier... I think your answer is
10 yes. Because you... the question was, you confirm that you authorised the payment. Now we know that you did authorise. So your answer to that question is: Yes, I did authorise. If she wants to ask further questions, we can take it from there.

ADV HOFMEYR: I would like to move to the only documents we do have ...[intervenes]

PROF MOKGORO: H'm.

ADV HOFMEYR: ...about Treasury and the payment. And you will find that at page 94 of Exhibit DD32.1. Chair, I see
20 we are approaching the lunch-break. I certainly should be able to finish in time. I have a few more questions, just to give you a sense of where we are going.

CHAIRPERSON: Okay, okay.

ADV HOFMEYR: Do you see page 94, Professor Mokgoro?

PROF MOKGORO: Yes.

ADV HOFMEYR: Now that is what came to you as I understand it.

PROF MOKGORO: Yes, that is what ...[intervenes]

ADV HOFMEYR: It is addressed to you, the acting Director General.

PROF MOKGORO: That is right.

ADV HOFMEYR: And it says:

10 “Dear, Professor Mokgoro. Attached please SAA Express documents for your urgent attention and processing of payment.”

And it comes from the HOD of Committee Safety and Transport. Correct?

PROF MOKGORO: Correct.

ADV HOFMEYR: And then, if I understand your sworn statement, what was attached to it was the invoice from SAA Express. Is that correct?

PROF MOKGORO: Yes, that is right.

20 **ADV HOFMEYR:** Your sworn statement says it was also accompanied by an unsigned copy of the agreement between SAA Express and the North West.

PROF MOKGORO: That is right.

ADV HOFMEYR: Do you recall that?

PROF MOKGORO: Yes.

ADV HOFMEYR: We have asked for about a year for your department to provide us with that copy of the unsigned

agreement. I understand that it cannot be located. Is that right?

PROF MOKGORO: Is that the SLA or the MOU?

ADV HOFMEYR: No, the SLA. As I understand your statement, you say you got this letter. You got the invoice and you got the unsigned SLA. Is that correct?

PROF MOKGORO: Yes, Chair I got this document. I got the MOU, as well as the SLA.

ADV HOFMEYR: Oh, I was not aware that you got the MOU.

10 **PROF MOKGORO**: Ja, there was an MOU.

ADV HOFMEYR: Because we have also never been able to locate that MOU. Do you... have you made any efforts to find it?

PROF MOKGORO: Well, as I have said earlier Chair. When I got word that were some missing documents, I did issue instructions for them to be submitted.

ADV HOFMEYR: H'm. I understand. Well, the feedback yesterday from your lawyers was that they could not be located. But I understand you... apologies. From your
20 office, was that they could not be located. I have just been assisted by that from my learned friends. Right.

So you get the request: Please process for payment. And then you get an invoice which is over the page at 95 which has something written at the bottom.

Can you tell me whose handwriting that is at the bottom

of the invoice?

PROF MOKGORO: Chair, it... maybe before I respond to this question. Maybe, just again a question of language. The letter that is addressed to me, it says:

“Attached, please, South African Express documents for your attention... for your urgent attention and processing.”

And the question that I am grabbling with is, does that mean the same as approve?

10 **CHAIRPERSON**: I am sorry. Just say that again?

PROF MOKGORO: The letter addressed to me:

“Attached, please, South African Express documents for your urgent attention and processing of payments.”

CHAIRPERSON: H’m?

PROF MOKGORO: I do want to convey to the Commission, the decisions that are taken there, as my role as coordinator was the decision makers have decided is to make funds available. And this document actually confirms what I have
20 been trying to argue all the time.

CHAIRPERSON: H’m.

“Attached, please, South African Express documents for your urgent attention and processing of payments.”

What is certainly says, it expects you to process

payment and it seems that you are given certain SAA Express documents which it is considered you should have with regard to, and then processing of payment. But I just want to understand the point you were seeking to make.

PROF MOKGORO: The point that I am making is and I thought that I had conveyed that sufficiently. The point I keep on emphasising is, I hate to refer to myself as, you know, a boost-man. Not say a boost-boy.

There is a decision that is taken by the decision makers.
10 And as part of the package, Treasury is involved, the accounting officer is involved and the decision reaches me.

This is a priority project indeed, as they certainly themselves have indicated. And I have to make those funds available.

So I then said to Treasury and the other finance people: Process this. Maybe I should have gone back to Exco and said: Your decision is uninformed.

In retrospect, maybe I should have done so. But it was not my space, you know. Decisions and transactions take
20 place in the departments and that is why there is an accounting officer there.

CHAIRPERSON: You know what I would have expected and maybe somebody who has been in government for some time would not expect the same thing as I would.

I would expect that if you were the person who had the

power to authorise payment in regard to a project that belongs to a particular department.

I would imagine that your attitude would be, when your different departments want me to authorise payment, you must sent me documentation or a memo that satisfies me that certain things that need to be complied with before authorisation of payment can be made, have happened or have been complied with.

So that there will be a memo that will say: Acting DG,
10 they are asking you to authorise payment for this and such and such an amount. This is about such and such a project.

We assure you that the following legal requirements have been met, one, two, three, four. To give you comfort that you can sign that.

I am saying that would be my expectation of what the government departments should do. And that is what I would have expected so that you feel covered that you are not going to be in a situation where you have authorised something only to find that there was no compliance with the
20 relevant prescripts.

But it may be that there is not the only way in which things can be done and maybe that there are other ways but that would have been my expectation.

PROF MOKGORO: The expectation is correct. And it is such a pity that there is no record here because I did have

an engagement with the HOD.

CHAIRPERSON: H'm.

PROF MOKGORO: Not because I had any authority in terms of the money that had been allocated to his department.

CHAIRPERSON: H'm.

PROF MOKGORO: Although, sitting in the Office of the Premier.

CHAIRPERSON: H'm.

10 **PROF MOKGORO:** Because again, he is the accounting officer. He would have provided the necessary evidence to the MEC that they have gone through due process. And the MEC also, one would expect that would have assured himself that there was process before addressing Exco on these matters.

CHAIRPERSON: H'm.

PROF MOKGORO: And the expectation that I should have declared this thing with the authority meeting. Yes, I would advise but certainly not refuse to have the processing of
20 that.

CHAIRPERSON: H'm. Okay.

ADV HOFMEYR: Professor Mokgoro, you were the Accounting Officer in the Office of the Premier, correct?

PROF MOKGORO: That is correct, Chair.

ADV HOFMEYR: Yes. These funds came from funds placed

with the Office of the Premier, correct?

PROF MOKGORO: Ring fenced in the Office of the Premier.

ADV HOFMEYR: Yes. And the PFMA, we went through previously, requires you in that role to ensure that there is no unauthorised irregular expenditure, correct?

PROF MOKGORO: Yes, every accounting officer ...[intervenes]

ADV HOFMEYR: H'm. Because ...[intervenes]

PROF MOKGORO: ...has to do that.

10 **ADV HOFMEYR**: Yes.

PROF MOKGORO: If you are talking about an accounting officer of a different department to the one whose ...[intervenes]

ADV HOFMEYR: No, but Professor Mokgoro, we keep going back there. So that is why it is important. This was not coming out of the budget of Committee Safety and Transport Development. It was coming out of ring fenced funds in the Office of the Premier for which you were the only accounting officer, correct?

20 **PROF MOKGORO**: It was money earmarked for the Department of Transport Management, not for the Office of the Premier.

ADV HOFMEYR: No, it was ring fenced funds placed in the Office of the Premier for the MRRP Project. That is your evidence ...[intervenes]

PROF MOKGORO: Chair, for coordination purposes, it makes sense to say funds are going to be pulled so that this government ensures that the priority that has been decided upon are actually carried out. But transaction, procurement and transactions are the responsibilities of accounting officers in those departments.

ADV HOFMEYR: Why then, Professor Mokgoro is it your signature at page 97 and not the signature of the HOD in the Department of Committee Safety and Transport
10 Development? If you go to page 97, that is the page from the Republic of the North West...

Sorry, the Republic of South Africa, North West authorising R 50 million be paid to South African Express Airways. I take it that is your signature at the bottom of the page. Is that correct?

PROF MOKGORO: Chair, after all the decisions that have been taken, my responsibility was to communicate that and this is what this document reflects.

ADV HOFMEYR: Is this your signature?

20 **PROF MOKGORO:** I say exactly that. It is my signature.

ADV HOFMEYR: Thank you. Chair ...[intervenes]

CHAIRPERSON: You know... I am sorry. You know this question of who was the accounting officer for these funds, it is quite interesting because I suspect that if the HOD of that department came here... I do not think he or she has come

here?

ADV HOFMEYR: H'n-'n.

CHAIRPERSON: Okay. I cannot remember everybody ...[intervenes]

ADV HOFMEYR: [laughing] No.

CHAIRPERSON: For the past two and a half years. I have a suspicion he or she would say: I was the accounting officer for funds that were within my control. These funds were not within my control.

10 They were in the control of the Office of the Premier. Therefore, it is the acting DG who was the accounting officer for those funds.

How can I be accounting officer of funds that are not in my department? I suspect that that is what they will say. What do you say to that?

PROF MOKGORO: I would ask him as to why did he give the responsibility to go on a process of procurement? Because that is normally the responsibility of an accounting officer of a department. And that is normally that I keep on
20 referring to.

It is a difficulty that would arise where in terms of the PFMA which talks about vertical accountability. You suddenly find yourself having to coordinate all the departments because this policy requires but especially by all the departments. And I think that is really the source of

the difficulty.

ADV HOFMEYR: Yes ...[intervenes]

CHAIRPERSON: But of course in our discussion earlier, I think before lunch... before tea-break, part of what I could not understand and I understood you not being able to explain it properly. And if I misunderstood you, tell me.

Part of what I did not understand is, why were these funds removed from those departments if they would, after being removed and placed with the Office of the Premier.

10 One, they would still be used for the projects of those departments. Why were they not allowed to remain within those departments?

Because, otherwise, they were going to be used for those departments. Why were they moved? Did I understand your reaction to that issue correctly?

PROF MOKGORO: Chair, I think the question related to this one should be raised. Why did some departments contribute and never got anything in terms of projects? And I gave... this is normally... I have been trying to explain how a joint of
20 government body would operate.

Some departments would contribute but not get anything in terms of projects relevant to their departments because maybe government decided there will only be three priorities.

If I am the Department of Education and there is nothing about education, in the interest of the province, I would have

to make that contribution.

CHAIRPERSON: H'm. But going back to my question. Did I understand your evidence correctly? So what I said, there is nothing... there is no misunderstanding in terms of what your position... what you said earlier?

PROF MOKGORO: [No audible reply]

CHAIRPERSON: Let me rephrase it.

PROF MOKGORO: Please, Chair.

CHAIRPERSON: Maybe... I was saying, why were these
10 funds removed from the departments, you know, of each department contributing? Were removed from the departments, if they were still going to be used for the projects of those departments.

It seems to make sense that if they are going to be used for the projects of those departments, that they remain within those departments.

PROF MOKGORO: Exactly, Chair. That is exactly the point I have just made.

CHAIRPERSON: Sorry?

20 **PROF MOKGORO**: The point that I have just made to respond to that questions is, what about those departments who would have made contributions that no expenditure will take place in their department or related to the mandate of their departments?

Simply because, when you look at the list of priorities,

nothing about the other department is there but yet they have made a contribution.

So if you were to leave departments to keep their R 10 million each, those departments that are not part of these priorities would not spend.

CHAIRPERSON: Well, I take it that the normal thing that one finds is that each department is allocated a certain budget for purposes of its projects for a particular financial year.

10 And they are supposed to spend that money of the projects that they undertake. And that money remains in their departments.

But obviously, the MEC's of the various departments are supposed to lay oversight over the HOD's as to: Are you using... are we spending the money that we are supposed to spend and are we spending it for the purposes for which they are supposed to spend it? Are we acting within the ambit of the law? That kind of thing.

And then the premier looks at all MEC's, all departments
20 and say to the MEC's: I want to know what is happening in your department.

If he or she identifies certain departments that do not seem to be spending money that they are supposed to spend or they seem to spend money on things that they are not supposed to spend the money on, then he would then call

the MEC's, the relevant MEC to account.

Obviously, the MEC would bring the HOD, what is going on. That is how the premier would make sure that every department performs and spends money that it is given for, on things that they are supposed to spend on.

And when, they do not... if the relevant department is failing via the MEC and the MEC can, I guess, fire the DG or the premier fires both the MEC and the DG.

And you being premier, now maybe that is the kind of
10 things you also look at. Because you say: You are given this money to spend.

So if you are not spending this money, it means we are not going to be helping our people. So somebody must be fired if they are not spending the money.

PROF MOKGORO: Chair, taking R 10 million from each department was to develop a pool of money that would be spend on priorities. And some of the departments that contributed the money, some of them would have projects relevant to their mandates, other would not.

20 And as I tried to explain earlier. We are relying on the PFMA that operates on the basis of vertical or stove piped system of accountability.

Virtually, every responsible government in this world are striving to find funding modules that would say: We work together.

And I am sure the Commission would agree. There would be a need from time-to-time where the department have to go together... come together and address a common need or a common priority.

And the question is, now does that get funded when the PFMA operates in terms of a vertical system of accountability?

And I think this is how I get trapped into something that I have no responsibility for.

10 **CHAIRPERSON:** Yes. Okay. Mr Hofmeyr, I see I have taken some... but I think we must finish with him because you have ...[intervenes]

ADV HOFMEYR: Indeed.

CHAIRPERSON: Ja.

ADV HOFMEYR: I really have only a few more questions.

CHAIRPERSON: Ja.

ADV HOFMEYR: I have just been reminded that I left the question that I should have followed up on Professor Mokgoro. It relates to page 95. Page 95 contains the
20 invoice that came to you with that letter, asking you to process the payment.

Now I asked you about the handwriting on that page. Can you identify whose handwriting that is?

PROF MOKGORO: Chair, I have been grabbling with that very question and I have not been able to... I then asked,

and that was only recently, for documents which I was struggling to get from Mr Phatudi's department. And I got a document which I still have to through to find out because I have been in pursuit of this signature. I cannot tell whose signature it is.

ADV HOFMEYR: If you are curious about that writing and the date of it. This is the only reference that we could find to anything about Treasury approval. You see, it says... I do not even know if that t-e-i. I do not know who it is addressed
10 to but it says:

“Please process this payment for R 50 million, the payment agreed to with Treasury and at Exco.”

Right?

PROF MOKGORO: H'm.

ADV HOFMEYR: You say that you relied on that handwriting to authorise R 50 million because you will see the tax invoices is not for R 50 million. It is for a different amount. It is an amount of R 53 143 564,00. Correct?

PROF MOKGORO: Again, my understanding of the word
20 process, suppose that a decision had been taken earlier.

ADV HOFMEYR: H'm.

PROF MOKGORO: And I was privy to that decision. So it was not like this thing sprung from nowhere and I was asked to process.

ADV HOFMEYR: But is it usual to get invoices and then

just see handwritten notes about paying less than the invoice and then authorising those payments?

PROF MOKGORO: If there is no history or background to this, it is not reasonable.

ADV HOFMEYR: H'm. And why R 50 million? Why not the R 53 million? Because the next month you had to pay another R 60 million. Correct?

PROF MOKGORO: Yes, I have no recollection why the fifty.

ADV HOFMEYR: H'm.

10 **PROF MOKGORO**: I do not ...[intervenes]

ADV HOFMEYR: And did you make any enquiries at the time?

PROF MOKGORO: I could have made that enquiry.

ADV HOFMEYR: H'm. You see, the other strange thing about the invoice and I just ask... put it to you so that you can assist us. The letter that was addressed to you on the previous page, page 94, is a letter that was signed by the head of the department on the 16th of March 2015. Do you see that?

20 **PROF MOKGORO**: Yes, I do Chair. Yes.

ADV HOFMEYR: See, the invoice is dated the 24th of March. You cannot see that easily on the copy you have got but we did get a better copy from your office yesterday. So I can assure you, Professor Mokgoro it is in the top left-hand corner. It says March 24, 2015.

How could you have been provided with an invoice dated the 24th of March on the 16th of March when you got the request for payment? Can you ...[intervenes]

PROF MOKGORO: It does not add up.

ADV HOFMEYR: It does not add up, does it?

PROF MOKGORO: No.

ADV HOFMEYR: No. So you got asked to process payment on the 16th. For some reason, an invoice dated the 24th then appears with handwriting that we cannot identify that asked
10 you to pay R 50 million and you ultimately authorised the R 50 million. Correct?

PROF MOKGORO: I did not authorise it. I processed it.

CHAIRPERSON: Oh, okay ...[intervenes]

ADV HOFMEYR: So when you said on ...[intervenes]

CHAIRPERSON: Sorry. I am sorry. You say you did not authorise it, you processed it. Is that the payment?

PROF MOKGORO: Yes, Chair because the decision had already been taken. There has been... there had been discussions, presentations that preceded this.

20 So it was only after Treasury had come into the picture to assist the Department of Committee Safety and Transport Management that it was arrived at that R 50 million, who will be the one to assist the resuscitation of the air flights.

CHAIRPERSON: I am just trying to understand the fact that you say that you did not authorise it, you processed it.

Because I thought all along that given that you authorised but I may have misunderstood, was the power to authorise payments out of this ring fenced or these ring fenced funds? Did that power not lie with you?

PROF MOKGORO: Well, again, it is a tricky question of accounting officer.

CHAIRPERSON: Ja.

PROF MOKGORO: Because the accounting officer is the one would normally authorise payments and we are talking
10 about a model that is anomaly. It is a necessary model, I want to submit, but it is an anomaly because somehow or the other it is not facilitated by the manner in which the PFMA exists because it identifies an accounting officer who then becomes answerable for all decisions that are taken especially expenditure.

Now here you have a situation – and I know that, you know, I am sounding like a scratched record, here you have a situation and if the commission could apply its mind to this, why is a critical element of accounting and of
20 expenditure such as procurement, whether it is legitimate or not legitimate, why is it placed in the hands of an accounting officer in that other department, the department that is the implementer of what Exco has decided should happen.

CHAIRPERSON: In the documents that government

department must retain for purposes maybe of the Auditor-General's work would there not be a document that reflects who authorised payment? In other words, if somebody says there is R50 million that was paid to SA Express, I want to find out who authorised that payment, would there not be documents that will reflect that so and so would have authorised, generally speaking?

PROF MOKGORO: Generally speaking, yes, there should be.

10 **CHAIRPERSON:** Yes, yes.

PROF MOKGORO: There should be evidence of who authorised.

CHAIRPERSON: Yes.

PROF MOKGORO: And, if I may, Chair, perhaps the Auditor-General is one institution that could advise us as to once you go the route of joint government, how do you deal with the question of accountability?

CHAIRPERSON: But in regard to this particular payment, is it fair to expect that somewhere there ought to be a
20 document that reflects who authorised the payment?

PROF MOKGORO: I can only say that the one who authorises payment is the one who is accountable for expenditure.

CHAIRPERSON: Yes, but what I am saying is, it is fair to expect that at some stage or another, even if that

document is not there now, at some stage or another there ought to have existed a document that would reflect who authorised the payment.

PROF MOKGORO: Yes, Chair.

CHAIRPERSON: Yes. Okay, alright.

ADV HOFMEYR: Chair, I submit that there are legal questions that we are grappling with at the moment and in due course we will submit to you that the PFMA makes it perfectly clear who the head of department is and what the
10 responsibilities of that head of department as accounting officer is.

CHAIRPERSON: Yes.

ADV HOFMEYR: In just foreshadowing we will also make reference to page 97 because that is the page on which Prof Mokgoro has confirmed his signature appears and that is the page on which the claim is certified as being correct and the payment then was made through the bank account.

Chair, I would like to then just deal with one last aspect. Prof Mokgoro said that there was a decision of
20 Exco that he was relying on, is that correct, Prof Mokgoro?

PROF MOKGORO: That is correct.

ADV HOFMEYR: I would like to remind you that that decision, albeit it that those minutes are curious in a number of respects, does say that the contract must be signed, does it not? Do you recall that?

PROF MOKGORO: Yes, I recall that.

ADV HOFMEYR: Yes. You authorised this payment before the contract was signed though, did you not?

PROF MOKGORO: It is possible, Chair.

ADV HOFMEYR: Yes, your sworn statement confirms that you authorised the payment without a signed contract. So you were not even implementing Exco's decision, were you?

PROF MOKGORO: Ja, I recall vaguely and I think we
10 need just to check on that one. I recall that there was a question of launching that was given a consideration ...[intervenes]

ADV HOFMEYR: Sorry, could you repeat that?

PROF MOKGORO: There were some timelines that informed the instruction to proceed with payment.

ADV HOFMEYR: Yes, no, the timeline is as follows. You received that letter plus the invoice for 53 million on which in handwriting it said you must process the payment for 50 million and you were given an unsigned contract. The only
20 decision of Exco on which we can rely is the decision that says you can proceed to sign the contract.

So the chronology is, you authorised the payment before you had any signed contract, correct?

PROF MOKGORO: That SLA was not signed, it is true.

CHAIRPERSON: But I think the point – well, maybe not

Ms Hofmeyr's point, maybe it is her point, is that is the position not that authorising payment in relation to a transaction where there is supposed to be a signed agreement authorising payment without a signed agreement in circumstances where there is supposed to be a signed agreement would be irregular. Would it not be irregular.

PROF MOKGORO: Chair, I think what we would probably need to check because I think that must have been a
10 consideration at the time where you have transaction between government and government. That might have been a factor that weighed in.

CHAIRPERSON: But ordinarily it ...[intervenes]

PROF MOKGORO: Ordinarily it should.

CHAIRPERSON: Ja.

ADV HOFMEYR: But, Prof Mokgoro, you were the one who was making the decisions, so did you take that into account? Did you say it is okay to authorise this payment because it is government to government?

20 **PROF MOKGORO:** I am saying that because it is government to government and because there had been these discussions that had taken place and unfortunately when this service provider was engaged with in meetings that I did not attend, the totality of the issues at hand was such that because of the pressure, rightly or wrongly, we

proceed with this project and I signed the – I gave the instruction to process [indistinct – dropping voice]

ADV HOFMEYR: Where was the pressure from?

PROF MOKGORO: Well, the airline had to start operating - I would have to check the records - on a particular date and I think that must have been one [indistinct – dropping voice] that this thing had to be processed.

ADV HOFMEYR: Well, that would only have come in the agreement that had not been signed yet, would it not?

10 **PROF MOKGORO:** Yes the [indistinct – dropping voice]

ADV HOFMEYR: Thank you. In conclusion, Chair, if I may just put one or two to Prof Mokgoro. We started your evidence today with the Premier's inauguration speech in June of 2014. You will remember that that committed the province to a whole lot of initiatives over the year. Do you recall that?

PROF MOKGORO: I recall that, Chair.

ADV HOFMEYR: And then we move to the MRRRP project which itself had a number of initiatives identified for the
20 rejuvenation of Mafikeng. You recall that?

PROF MOKGORO: I recall that, Chair.

ADV HOFMEYR: I would just like to emphasise and highlight one or two of them. There was going to be increased security provided in Mafikeng was there not?

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: There was going to be water and sanitation infrastructure that was going to be improved, correct?

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: There was going to be decaying electrification infrastructure fixed, correct?

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: And for all of those initiatives there was 132 million ring fenced in the office of the Premier, is that
10 correct?

PROF MOKGORO: Yes, Chair.

ADV HOFMEYR: What – I would like your comment on this, Prof Mokgoro, because what concerns me about what transpired is that 50 million was taken out of that ring fenced amount which going to facilitate things like security, enhanced sewerage systems, better electrification, water and sanitation in the province and it was put towards a subsidy to a government entity so that flights could come. Are you concerned about that?

20 **PROF MOKGORO:** Well, certainly I am concerned about a long shopping list of priorities and in the end when the implementation takes place that that shopping list is not implemented and the question of privatization happens to be those who have been elected and when they take decisions about privatization, the implementers have a role

to advise but ultimately they implement.

ADV HOFMEYR: Thank you, Chair, those are our questions.

CHAIRPERSON: Premier, at page 97 before your signature there is writing there. You know, some – they way they made this copy I think some words are missing but I see the second line that says:

“That the above claim is correct and that payment has not previously been made.”

10 I suspect that it must be meaning that what is missing is something like I certify.

ADV HOFMEYR: I think so, Chair, because the last line in the Afrikaans I think has *gesertifiseer* cut off.

CHAIRPERSON: Yes.

ADV HOFMEYR: So I also intimated that it must say certified, that is the above claim, correct.

CHAIRPERSON: Yes, yes. Do you – well, you would know this. Is that what it is supposed to mean? You must have signed quite a number of documents like this before.

20 **PROF MOKGORO:** What page are we on, Chair/

CHAIRPERSON: 97.

PROF MOKGORO: Yes.

CHAIRPERSON: Ja. At the bottom of the page there is some writing there that appears above the date. Can you see that?

PROF MOKGORO: Above the date?

CHAIRPERSON: Above the date, yes. Can you see there is – I think it is three – it is one sentence translated into three languages.

PROF MOKGORO: Yes, I can see that, Chair.

CHAIRPERSON: Ja.

PROF MOKGORO: That:

“The above claim is correct and that payment has not previously been made.”

10 **CHAIRPERSON:** Yes, I am saying it looks like there are some words that have been cut off but I suspect that with regard to the English sentence there that probably what has been cut off probably says I certify, so that it would read:

“I certify that the above claim is correct and that payment has not previously been made.”

You would now maybe how these documents used to read at the time you were Acting DG?

PROF MOKGORO: No, I would not have a recollection.

20 **CHAIRPERSON:** Yes, but would you think along the same lines as me that ...[intervenes]

PROF MOKGORO: Probably yes, Chair.

CHAIRPERSON: Yes, yes. And if that is so, it seems to me and I want you to comment on this, that this document contemplates that you need to make sure that you are not

making a second payment in regard to – you are not paying – double paying, so to speak, you are not making a payment that has already been made before.

PROF MOKGORO: Correct, Chair.

CHAIRPERSON: Ja. And then where it says you certify that the above claim is correct, I wonder whether one should not understand that to mean you are certifying that making this payment will be correct, it is proper, it is legal, that kind of thing. Would that be your understanding as
10 well or would you have a different understanding of what this might mean?

PROF MOKGORO: My understanding is that a critical department had been drawn into the process or facilitating – they are making this amount available and that was Provincial Treasury apart from the department. So with the involvement of Provincial Treasury I would have no reason at the time to doubt even their constitutional role.

CHAIRPERSON: Okay. I assume that there is no intention to re-examine the Premier?

20 **ADV HOFMEYR:** Chair, we have just been exchanging ...[intervenes]

ADV MOKOTE: Yes, we have been [inaudible – speaking simultaneously]

ADV HOFMEYR: Notes on the point so if I can hand over to my learned friend.

CHAIRPERSON: Yes.

ADV MOKOTE: Yes, thank you, Chair, there is indeed a need to re-examine. If I may just illustrate? For example the Chairperson has already communicated that the impression concerning two amounts that were testified about. Firstly, of the R110 million payment and compared to the 4 and a couple hundred thousand that we talked about. When I read it I would also like to get clarify from – and for purpose of the Commission.

10 **CHAIRPERSON:** Yes.

ADV MOKOTE: Because the impression is that we could be talking about one and the same thing when the other is talking about a fund and the other is talking about an annual fee.

CHAIRPERSON: Yes.

ADV MOKOTE: So if we leave it as this, it will create an impression that we are talking about apples when one could be a pear.

CHAIRPERSON: You – are you saying you would like to
20 re-examine, that you have one or two questions?

ADV MOKOTE: We would definitely like to re-examine, yes.

CHAIRPERSON: Would it be something as short as that, one or two questions, or is it much more involved?

ADV MOKOTE: It is a bit more involved.

CHAIRPERSON: Ja, how much time?

ADV MOKOTE: I have a number of things.

CHAIRPERSON: Yes, how much time do you think you would require? I am trying to see – we were trying to make sure that we can release the Premier when we go for lunch so that he does not have to come back and you do not have to come back.

ADV MOKOTE: Ja.

CHAIRPERSON: When we go to the next witness.

10 **ADV MOKOTE:** When we go to the next witness.

CHAIRPERSON: So but it might depend how long you are going to be whether I allow you to start re-examining before we go on lunch or we go and lunch and come back.

ADV MOKOTE: I will say, Chair, it is substantially long(?) part of the critical information that needs to be done and I must take the blame that I – not to be able to find the document. There was a question earlier on about the request for proposal, whether there was a process like that and I can remember vaguely seeing a document of that
20 nature and it might be important that we get it – if we get it then we bring to the Commission.

CHAIRPERSON: Yes.

ADV MOKOTE: So I do believe that a lot of – it is not going to be just a quick clarification process.

CHAIRPERSON: Yes, yes.

ADV MOKOTE: If an arrangement has to be made for that purpose, I will be in the Chair's hands but definitely it is not a question of just running through the mill with this thing.

CHAIRPERSON: Well, the re-examination in terms of the regulations must be for clarificatory purposes.

ADV MOKOTE: Yes, yes.

CHAIRPERSON: Ja, in the Commission.

ADV MOKOTE: Yes.

10 **CHAIRPERSON:** So, strictly speaking, I would not allow questions that are not aimed at clarification.

ADV MOKOTE: Ja.

CHAIRPERSON: I would only allow those that are aimed at clarification.

ADV MOKOTE: Definitely.

CHAIRPERSON: So there is the question of whether you are suggesting that we release the Premier and another day be arranged for you to re-examine or whether you are saying well, maybe let us adjourn and you would like to re-
20 examine him after the adjournment? What would you like to see happen?

ADV MOKOTE: Could I perhaps before I answer that also have a minute to just confer with the Premier insofar as his time availability?

CHAIRPERSON: Do you want to walk across and whisper

to him while I am here or did you want to have – we will not hear, I think, what you will say. If you able to whisper.

ADV MOKOTE: Let me just do that.

CHAIRPERSON: Ja, just go approach him and whisper and whisper and then let me know.

ADV MOKOTE: Thank you. Thank you, Chair.

CHAIRPERSON: Ja.

ADV HOFMEYR: Prof Mokgoro, can I suggest you turn off your microphone, just for the purposes? Thank you.

10 **ADV MOKOTE:** Thank you, Chair. We have just discussed. I think I want to put my head on the block and say that my re-examination will not take 30 minutes and we can do that – perhaps let us do it after – let us take a break and do it after the break so that I can just connect them quickly and eliminate having to go into unnecessary stuff.

CHAIRPERSON: Okay. Ms Hofmeyr, what do you say?

ADV HOFMEYR: Can I just seek a point of clarification from my learned friend? There seemed to be suggestion
20 that there is a new document that we have not seen.

ADV MOKOTE: Yes.

ADV HOFMEYR: A request for proposal. If that is so we would need to see it. We certainly cannot proceed to re-examination in a situation where we have not seen the document and Prof Mokgoro has not been questioned on it.

Is there indeed a document that we should see?

ADV MOKOTE: Prof Mokgoro has fortunately in his bundle has a copy of the request for proposal dated 5 August 2014. I know it well. That may just be one thing. What we will do with that document because it – we will send it to the evidence leaders, we do not need to clarify about it. I will clarify about other things that I think need clarification.

CHAIRPERSON: Okay.

10 **ADV MOKOTE:** Ja and this document, the evidence leaders can consider at own time and if needs be and word is needed from Professor, that can be arranged. Yes.

CHAIRPERSON: Okay. I think then we must take the lunch adjournment. It is twenty nine minutes to two. We come back at half past two and then there will be re-examination and then after that we will then have the next witness.

ADV HOFMEYR: Thank you, Chair, we may request an opportunity just to consider the document over the break.

20 **CHAIRPERSON:** Yes.

ADV HOFMEYR: Because it may be that we can deal with it then. If is unfortunate that it is being presented only now.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: But we can do what we can to make the

process efficient.

CHAIRPERSON: Okay. Alright, we are going to adjourn then for lunch, we will resume at half past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Hofmeyr?

ADV HOFMEYR: Thank you Chair. Chair we have taken the lunch adjournment in the expectation that we would be
10 returning for Professor Mokgoro to be re-examined, but before the lunch break I had requested an opportunity to consider some of the documents which my learned friend had indicated they had received recently and which may be pertinent to the matters involving Professor Mokgoro. I did take an opportunity to look through some of the documents over the lunch break.

I understand there to be two separate sets of documents. There's a bundle that Professor Mokgoro asked his office to put together for him, that was the
20 bundle that I had seen some documents in, and then there's another set of documents which have also been obtained.

The documents that I did see and discuss with the investigators are documents that certainly require further investigation, they are documents which the Commission

has specifically requested over the period of this investigation and we were led to understand did not exist. What I have seen suggest that those documents have been found and do exist and in my submission it would not appropriate to proceed to the re-examination in a situation where there might be material documents that we haven't yet had an opportunity to consider, and place within the full matrix of the evidence related to Professor Mokgoro's testimony.

10 I have discussed the matter with my learned friend, I understand him to be essentially in agreement but what we propose be done is that we adjourn now, insofar as Professor Mokgoro's evidence is concerned. He be released so that we can obtain the documents, I understand they will be sent through to us by Professor Mokgoro's attorney in due course. They only have one copy here today. We can then consider them and then certainly engage with our learned friends about what we make of the documents and what the further process
20 should be.

I can hand over to my learned friend if there is anything he wants to add, if I may.

CHAIRPERSON: Yes.

ADV MOKOTE: Thank you Chairperson, just to indicate that we are in agreement with the process proposed.

CHAIRPERSON: Yes.

ADV MOKOTE: Also, because we haven't also had an opportunity to have a view of the documents.

CHAIRPERSON: Yes.

ADV MOKOTE: So it is only fair that we all get an opportunity to reflect on them.

CHAIRPERSON: Yes, okay. Okay, no that is fine. I don't have a problem that we do that therefore we will postpone the re-examination of Professor Mokgoro to a date still to
10 be fixed, particularly because his re-examination won't take long and even if Ms Hofmeyr after having studied the documents might wish to put some questions to Professor Mokgoro before re-examination happens, I don't think that evidence will take long. I think we may – we must all be ready that we might have to – Professor Mokgoro might have to come back for an evening session. We do hold evening sessions sometimes so during the day there will be witnesses who give evidence and other witnesses might come at four o'clock or five o'clock, we hear that evidence
20 depending how long it is going to be, it might be up to seven, it might be up to eight and so on.

So we might have to do that because a number of – most of the days are kind of filled up for the rest of the year so we might have to do that, but if an opening happens on one of the days then we can look at that as

well.

So therefore, Professor Mokgoro we are going to adjourn – postpone the hearing of your re-examination and another date will be arranged and time and your lawyer will let you know. Is that alright?

PROF MAKGORO: That is okay, thank you very much Chair.

CHAIRPERSON: Okay, alright, you are therefore excused for today.

10 **PROF MOKGORO:** Thank you Chair.

CHAIRPERSON: Thank you.

ADV HOFMEYR: Chair we next have the evidence of Ms Memela, we do need to move things around a bit to ensure she has the right files, could we take a brief adjournment to facilitate that?

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: Thank you so much.

CHAIRPERSON: We will adjourn.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Are we ready?

ADV HOFMEYR: Yes thank you Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: Chair I would like to just begin with

orientating ourselves in relation to Ms Memela's evidence, because the Commission last received evidence from Ms Memela in February of this year and in the course of that evidence you had granted her leave to be re-examined, and that was confined to a period of two hours, there was an opportunity afforded to Ms Memela to make application for a longer period if required and she declined that opportunity. Now since those events in February the Commission has received the evidence of Mr Ndzeko, and

10 Mr Ndzeko's evidence took place last month, on the 26th of August and that evidence implicated Ms Memela in various matters, which I will come to in a moment, it also implicated her legal representative who appears today to represent her, Ms Mbanjwa, who was also her legal representative on the last occasion that Ms Memela appeared. So, after Mr Ndzeko's evidence the legal team and investigators, through the Secretariat wrote, both to Ms Memela and Ms Mbanjwa and indicated to them that Mr Ndzeko's evidence had implicated them and invited them to

20 provide affidavits to the Commission in order to respond to Mr Ndzeko's evidence. There were responses received, both from Ms Mbanjwa and Ms Memela. Ms Mbanjwa's response came in on the 9th of September and her attitude was that Mr Ndzeko had not implicated her in his evidence. She had concluded that the request for an affidavit from

her was based, either on a misunderstanding on Mr Ndzeko's testimony or on other ulterior motives and so she declined to furnish an affidavit to the Commission. Ms Memela's response was, initially to ask for a series of the documents that had been referred to in the course of Mr Ndzeko's evidence and those documents were provided to her on the 14th of September, they comprised the following.

There were the two affidavits from the members of the Police Force at Mount Frere, they were the hand-
10 writing expert's affidavit and report. There was the affidavit of Chief Sigcau and there was Mr Ndzeko's affidavit and Mr Aires affidavit. There was also a request for an affidavit from Mr Phiri. Now I must just remind everyone who Mr Phiri was. Mr Phiri was the acting CEO at the time that both the GPU sale occurred and the award of the tender to AAR and JM Aviation. There was a reference in February, during Ms Memela's evidence and I think subsequent to that for a version from Mr Phiri to be obtained on matters and Ms Memela was told, through her
20 attorney, Ms Mbanjwa at the time that the Commission had engaged with Mr Phiri and that it was in the process of obtaining an affidavit from him. So when those first set of documents were provided to Ms Memela on the 14th the response and request for Mr Phiri's affidavit was responded to on the basis that, as soon as the Commission

received it, it would provide it to Ms Memela and that took place on the 17th of September. There was a link provided – there might have been a little bit of a delay in her being able to access the link, but my understanding is that that's also been received by Ms Memela.

There was no affidavit forthcoming from Ms Memela, despite the invitation for her to address the matters raised in Mr Ndzeke's evidence and as a consequence of that, on the 23rd of September, we wrote again to Ms Mbanjwa and
10 notified her that, because there had been no affidavit forthcoming and because of the evidence of Mr Ndzeke and its implications for Ms Memela, the legal team would make a request today to be given the opportunity to question Ms Memela about those aspects before the commencement of her re-examination and she was advised that she should come prepared to be able to answer those questions. There was correspondence then received yesterday from Ms Mbanjwa on behalf of Ms Memela to say that they intended to object to that request. So, what I'd like to do,
20 with your leave Chair, is just explain why we make the request and motivate for it and then if the objection is still persisted with, then to hand over to my learned friend Ms Mbanjwa to make any submissions she wishes to make, thank you Chair.

Chair, we request an opportunity to question Ms

Memela in relation to Mr Ndzeke's evidence because what he covered in his evidence is pertinent to the issues that Ms Memela testified about previously and I'd like to just identify the nub of the issue. Ms Memela's evidence previously, in February, before this Commission was that the payment of R2.5million that came from JM Aviation and that was used to purchase her Bedfordview property, was not untoward in any way, it was not a corrupt payment and the reason for that is because it was actually money that
10 was owed to her mother pursuant to a sale agreement that Mr Ndzeke had entered into with her mother and which her mother had then simply decided to donate to Ms Memela for the purposes of her property acquisition. That was the case, explaining on the part of Ms Memela the receipt of the R2.5million.

The evidence that has been received from Mr Ndzeke is evidence in which he conceded in the end that, that sale agreement was a fraud, that it was not entered into in 2015, that it was entered into or signed at least by
20 him in 2019 and if that is so, Ms Memela's entire explanation for the receipt of that R2.5million is called into question. I submit there can be no doubt that, that implicates Ms Memela in very serious matters and it is important for this Commission to be able to question her, if for no other reason than to give Ms Memela an opportunity

to explain her side of the story in relation to the concession made by Mr Ndzeko. Chair it's the work of the Commission to investigate matters, this is not an adversarial proceeding, it's a proceeding that often has fluidity in it, witnesses get called back often, as matters develop, the get questioned by more than one representative of the legal team because they are implicated or have relevant evidence to give in different areas and so it's in accordance with its investigative
10 function, coupled with, I submit, the importance of fairness to witness against who implications are made to be afforded an opportunity to give their account of events and so it's against that backdrop that we submit it would be appropriate to question Ms Memela on the matters arising from Mr Ndzeko's evidence. I submit that she was given forewarning of the fact that the request would be made today, she's been provided with all the documents that she requested and so there could be no prejudice to her with the matter proceeding on that basis today and those are
20 the grounds on which we submit it would be appropriate for the request to question her to be granted. If I may then hand over to my learned friend if there's an issue to be taken with that request.

CHAIRPERSON: Yes, Ms Mbanjwa do you – you oppose the request?

MS MBANJWA: I do Chair.

CHAIRPERSON: Stand closer to your mic.

MS MBANJWA: Chair, I do not know when I'm sitting, maybe just for procedural reasons, when I'm sitting here I'm raising my hand to raise an objection, I think I'm not...[intervenes].

CHAIRPERSON: Don't raise your hand, you'll be given a chance to speak at some stage, don't raise the hand.

MS MEMELA: Oh, I thought I was invisible to the Chair,
10 so basically, first thing which I want to do is just housekeeping, I just want to exchange...[intervenes].

CHAIRPERSON: I'm sorry, where you are standing, it may be that what you are saying is not captured by the recording property, because it think you're standing far away from the mic. If there is difficulty – are you able to speak close to the mic while standing?

MS MEMELA: I'm not sure Chair.

CHAIRPERSON: Well I'll allow you to sit down, I'll allow you to sit down and address me seated, if that's going to
20 make things easier.

MS MEMELA: Thank you Chair, but first can I walk over to Ms Memela I just want to exchange the Bundle, I want the Bundle, she took the Bundle I was preparing on?

CHAIRPERSON: Oh, she took your Bundle, okay.

MS MEMELA: Chair you will guide me if I am not very

audible?

CHAIRPERSON: Ja.

MS MEMELA: Firstly, this request by...[intervenes].

CHAIRPERSON: So, is the first thing that the objection stands, continues?

MS MEMELA: Yes, we are objecting.

CHAIRPERSON: Oh, okay, alright, yes give me your submissions, reasons.

MS MEMELA: First Chair, we did write a letter to the
10 Commission and we said in the letter to the Commission,
we are prepared to meet the Commission halfway. If the
Commission has certain witnesses that is, Ms Hofmeyr,
which she wants to address to us we will answer those
questions. She can give them to us in writing and then we
will also answer them in writing.

CHAIRPERSON: Why must that be the case?

MS MEMELA: No, the reason why that must happen is
because we are of the honest view that it is going to help
us if we go first and the reason why we are saying we
20 should go first is because our understanding – I
understand what Ms Hofmeyr says about the fluidity of
the...[intervenes].

CHAIRPERSON: So, is the position that your objection is
not to the request as such but it's to the sequence as to
who – what should happen first?

MS MEMELA: Yes, mainly it is – it is multi-pronged Chair. I was starting with the first one because remember one must start the being conciliatory in proceedings like these because we have a duty to cooperate. So, we said, we want to go first and the reason why we want to go first is because we are of the view that ...[intervenes]

CHAIRPERSON: Okay, okay no, I just want to make sure I follow. Are you saying, you are not – you have no objection to me granting the request put forward by Ms Hofmeyr, but you would like to request that, if that request is granted, she should question Ms Memela after you have finished re-examination, is that your position?

MS MEMELA: Let me rephrase, I see my client nodding.

CHAIRPERSON: Ja you client is nodding, I can see.

MS MEMELA: But it's a two-pronged ...[intervenes].

CHAIRPERSON: She's giving you instructions.

MS MEMELA: Yes she's giving me – yes thank you, that's why I'm pointing it out Chair, I must follow her instructions but there is also something which may be – before I come to the next one, let me just start first on a one which is a legal issue and the legal issue is, when we received this request it took us by surprise. Ms Hofmeyr has made an address here and the reason it took us by surprise is the fact that we couldn't see any basis and the reason why we are saying that there is no basis is because after Mr

Ndzeko had given evidence...[intervenes].

ADV HOFMEYR: Chair, if I may just interject, I do apologise Ms Mbanjwa, I've just been told that the sound quality is particularly bad and so transcription of what Ms Mbanjwa is saying is not going to be ideal. I wonder if I should not leave the podium, we'll sterilise so that it's safe for you to...[intervenes].

CHAIRPERSON: Let's do that ja.

ADV HOFMEYR: And then you can complete your
10 submissions here Ms Mbanjwa.

MS MEMELA: Thank you Chair.

CHAIRPERSON: I may just mention to you, Ms Mbanjwa, so that you know exactly what's in my mind. I can mention to you that after I'd heard Mr Ndzeko's evidence without the legal team making any request I said to myself, well it will be important to hear what Ms Memela has to say about some of the evidence that emerged during Mr Ndzeko's evidence. So with or without the legal team making the request, I was going to want to hear Ms Memela's side of
20 the story on some of those things.

MS MEMELA: Thank you Chair, for advising of your view already but I was still on the point of saying, this request caught us by surprise and the reason is simple, it's because of what Ms Hofmeyr has said, it is said that these proceedings are inquisitorial. When a request was

forwarded to us to say Mrs Memela must submit an affidavit, we took the view, having listened to the audio of Mr Ndzeke that she had not been implicated. I won't go into the reasons now, I will go into them when the time for re-exam comes but then after that, we received a letter from Ms Bridgett Tshabalala which I believe was shared with Ms Hofmeyr, I will just read page 8, I'm sorry paragraph 8, I do have the Bundle if there's any dispute about this because it is a letter that was sent on the 21st of
10 September or dated 21st of September and paragraph 8 provides as follows,

“In the event of her failure to provide a version, Mr Ndzeke's evidence about her involvement will be undisputed”.

Now, if we accept that these are inquisitorial proceedings and if we accept that we run the risk and that is the risk of saying that, if we do not file an affidavit explaining Mr Ndzeke's evidence, as they stated here, they said that here involvement will be undisputed. Our
20 understanding now is this – and it comes from purely a question of procedure and again before I go to the question of procedure it goes to what Ms Hofmeyr said to us when we had an interview with her. She said, I as Ms Hofmeyr, I am a lawyer for the public, I'm not your lawyer, Mrs Memela or I'm not your lawyer, whoever comes as a

witness before the Zondo Commission being an accused. So, which means, therefore that, these people come represented by people like us, their legal advisors so why now I am supportive of Mrs Hofmeyr when she says now, to examine Mrs Memela in order to protect or to assist Mrs Memela, we are saying, no, we know for a fact because she is on record as saying that she is not going to assist any Mrs Memela because she is a lawyer for the public. So, we are raising that because it is going to be important

10 when we do the re-examination when we are going to discuss evidence and documents which we are going to submit here which we know are already with the Commission and have not been put forward in the public hearings at least. Now, we are now coming to the inquisitorial nature of these proceedings. We are saying, if Mrs Hofmeyr has already made a conclusion – because she did make that conclusion when the evidence of Mr Ndzeke was led because she said that Mr Memela assisted Mr Ndzeke by selling the GPU's to her daughter and then she

20 again made a conclusion, she said that – she said that there was a date of 2019 it means that it's fraud. So she has made this conclusions and now I'm saying, now that she has made these conclusions which obvious are going to fit into the report that is going to be made by the Commission to the SIU's that is the Special Investigation

Unit, what is the purpose now to be gained by now again examining Ms Memela and then, now coming, Chair, again, if this was an ordinary Court of Law, I know it is not, I know that the Commission – you as the Chair of the Commission has a discretion on what to allow but again – because at the end of the day we're talking here time and for us, especially for me, time is money. Now we've got a question we ask, what is it that is going to be said by Ms Hofmeyr asking Mrs Memela these questions and we're
 10 asking that question...[intervenes].

CHAIRPERSON: Mr Mbanjwa a lot will be said by me getting certain clarification from Ms Memela.

MS MEMELA: Yes, Your Worship just to put this thing...[intervenes].

CHAIRPERSON: It will help me a lot to hear ja.

MS MEMELA: Thank you, Your Worship, you having said that and I respecting you as the Chair of this Commission, I still need to put it on record and the reason why I'm putting it on record is because at the end of the day when
 20 the Commission is done and dusted a certain kind of *juris prudence* will have to come from the hearings of this Commission which is why I'm now putting on record and saying that, generally in a Court of Law if a person wants to re-open – because that is basically what we are doing we are re-opening. I know that she said because of the

fluidity but still there must be a basis. Now, if these things are going to be forwarded...[intervenes].

CHAIRPERSON: But the basis is that when Ms Memela gave evidence previously in February, Mr Ndzeke had not given evidence and subsequently Mr Ndzeke gave evidence which raised certain issues that relate to the issue of the sale of land and Ms Memela had explained the payment of the R2.5million on the basis that there was a genuine sale of land.

10 **MS MEMELA:** Yes, but Your Worship, the point is, these issues were traversed already...[intervenes].

CHAIRPERSON: Sorry?

MS MEMELA: These issues were traversed already with Ms Memela...[intervenes].

CHAIRPERSON: They were not traversed in the light of Mr Ndzeke's evidence.

MS MEMELA: But Your Worship – but Chair, it is not going to be the Commission that is going to make a finding of guilt. If this was a criminal Court there would be
20 relevance because then procedurally this testimony would be flawed because what would be said, it would be said to Ms Hofmeyr, Ms Hofmeyr you did not put the version of Mr Ndzeke to Mrs Memela. In this case, that difficulty does not arise and why I'm saying that Your Worship is that we would love to move to more important things because we

need the time to re-examine that is that and then now coming now to the other issue, because you have already advised me, Your Worship, that you are also of the inclination to want questions from Mrs Memela. If you should choose to do that then, Mr Chair, we want now to plead as follows. We have all seen, we've been here with Ms Hofmeyr that is the problem with time. If Ms Hofmeyr is allowed to go in first, what is going to happen is that these questions are going to be long and our two hours are going
 10 to be exhausted we are already at 3 o'clock, my understanding is that the Commission finishes at 5. We went to confine ourselves to the two hours and in order to do that, we want to go in first so that we limit ourselves to our two hours we do what needs to be done and then we are done with it.

CHAIRPERSON: I guess the sooner we start, the better.

MS MEMELA: As it pleases.

CHAIRPERSON: Is that right?

MS MEMELA: Yes, so are we beginning now Chair?

20 **CHAIRPERSON:** I think we must begin, I will grant the request.

MS MEMELA: You have granted the request, so who is going to start first because...[intervenes].

CHAIRPERSON: Ms Hofmeyr must start and then re-examination will come after.

MS MEMELA: Okay, as it pleases, thank you.

CHAIRPERSON: Yes, thank you. Let's talk about how much you envisage – how much time you think you might need to question Ms Memela, Ms Hofmeyr?

ADV HOFMEYR: Chair, on the last occasion of Ms Memela's questioning I anticipated a day and it ended up taking three and a half so I'm clearly a fairly unreliable estimator of time. What I can say to you is, it's a very focused set of questions, it relates to the evidence of Mr
10 Ndzeko, it relates to what Ms Memela has been reported in the media as having said about that evidence because we have not obtained from her, any version prior to today. So, I just need to begin by getting clarity from her as to what her version is in response to Mr Ndzeko and then to probe matters around it. We're now at 3 o'clock, I imagine being able to take an hour or a little bit beyond that but Chair, I do know that you also have indicated that you have questions so ...[intervenes].

CHAIRPERSON: Well I might not have lots of questions
20 but let's see how it goes. Let's see whether we are able to – you may be able to cover everything within 45 minutes.

ADV HOFMEYR: I will give it my best endeavour.

CHAIRPERSON: If there's a challenge we can look at time later on.

ADV HOFMEYR: Thank you so much.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: Thank you Chair...[intervenes].

CHAIRPERSON: I think the oath must be administered again because there's been a lot of time that has lapsed. If there is somebody who can give ...[intervenes]

ADV HOFMEYR: I have a spare pen.

CHAIRPERSON: Is it for the witness or yourself, or for your witness?

ADV HOFMEYR: Can I just ask Ms Memela to sterilise it
10 and then you can take my pen.

CHAIRPERSON: Okay, alright, thank you. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

WITNESS: My name is Nontsasa Memela.

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

WITNESS: No.

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

20 **WITNESS:** Yes.

REGISTRAR: Do you swear that the evidence that 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.

WITNESS: So help me God.

NONTSASA MEMELA: (duly sworn, states).

CHAIRPERSON: Thank you.

ADV HOFMEYR: Thank you, Chair, there's just one point of clarification. I understood my learned friend, Ms Mbanjwa to indicate that there were certain documents she wanted to traverse with Ms Memela. It would certainly be necessary for us to see those documents before re-examination unless they are documents that already form part of the Bundle. So, I just want to mention that as a
10 procedural matter. If Ms Mbanjwa can provide those documents to us in due course but we will need to have seen them before the conclusion of Ms Memela's questioning.

CHAIRPERSON: Ja, okay, alright.

ADV HOFMEYR: Thank you. Ms Memela I indicated earlier that there had been some media reporting after Mr Ndzeke's evidence which appeared to indicate your response to his evidence. I'm well aware that the media often gets quotations incorrect and persons positions
20 incorrect so I'd like to take you to the one article that we did come across and you'll find that in the Bundle that's been placed in front of you DD25C – oh Ms Memela they're just behind you, DD25C.

CHAIRPERSON: Shall we change this on the spine from Exhibit to Bundle?

ADV HOFMEYR: Yes, thank you Chair.

CHAIRPERSON: As we did with the other one.

ADV HOFMEYR: Yes.

CHAIRPERSON: So, this file will be Bundle DD25A?

ADV HOFMEYR: This is now C because A and B were already entered into the evidence when Ms Memela testified in February, so we now need...[intervenes].

CHAIRPERSON: Oh, he's given me another one.

ADV HOFMEYR: Yes.

10 **CHAIRPERSON:** So, this one is with A, so I just wrote Bundle instead of...[intervenes].

ADV HOFMEYR: That's fine and now we'll do Bundle DD25C which is the new one, thank you Chair.

CHAIRPERSON: So, this will be Bundle DD25C?

ADV HOFMEYR: Yes.

CHAIRPERSON: Okay.

ADV HOFMEYR: If you go right to the back of that Bundle...[intervenes].

20 **CHAIRPERSON:** Do we – should it be 25 without the C on the basis that what's inside may be A, B, C, D?

ADV HOFMEYR: Well what has happened is, we originally, in February, had Bundle 25A and B those were the bundles that contained the documents relevant to Ms Memela's evidence in February. Since then we've obtained the affidavit of Mr Phiri, which was not available in

February, which I indicated previously, has been provided. So, we placed in Bundle C, Mr Phiri's affidavit and then certain further documents including the one I'm going to take Ms Memela to now and so it was just to keep the sequence that we identified this file as 25C, with your leave.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: So, if we go right to the end it's page 1144, it's about three pages from the end.

10 **CHAIRPERSON:** Yes, I've got it.

ADV HOFMEYR: Thank you and Ms Memela I take you to this only because, as I stand here today, I don't have a version from you on Mr Ndzeke's evidence because the opportunity was offered for you to provide an affidavit and you declined that. So, the only reference point we have for ...[intervenes].

MS MBANJWA: Sorry Chair, it is because, unfortunately I have to object. When an application was made to question Ms Memela, it was confined. It was to be on the evidence
20 that was given by Mr Ndzeke, surely what the media writes cannot form part of Mr Ndzeke ...[intervenes]

CHAIRPERSON: No, Ms Mbanjwa, no please let's make progress, continue Ms Hofmeyr.

ADV HOFMEYR: Thank you, so this is the version that the media reports you as having given to them. If you turn

over the page at 1145 you are quoted as having told Times Live the following, it's in the second paragraph,

“The inquiries investigation team did not ask the correct people about the land. The asked the Cholani family which is where my mother was born instead of asking the Manzi family where my grandmother was born”,

Can you confirm that you gave that quotation to Times Live?

10 **MS MEMELA:** Chair you already know my problem.

CHAIRPERSON: Yes.

MS MEMELA: I'm unable to directly answer the question without giving a background and I'll give you the reason for that.

CHAIRPERSON: Well, one of – hang on one second.

MS MEMELA: Okay.

CHAIRPERSON: One of the reasons why we took as long as we did last time was that there was too much background. So, as I understand the question here is, a
20 simple one, there is a quotation attributed to you by this publication and the question is whether that is what you said or not?

MS MEMELA: That is what I said when I asked for my opportunity to state my side.

CHAIRPERSON: Yes.

ADV HOFMEYR: You did say that?

MS MEMELA: Yes.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Okay.

ADV HOFMEYR: And then later on in the page middle of the way down you responding to the work that was done by the handwriting expert and you are quoted as saying middle of the way down:

10 “My mother had no signature instead she
would write her initials and surname where
she was supposed to sign. For the inquiry
handwriting expert to compare how she wrote
her name more than twenty years ago when
she did an affidavit for me to get an ID
versus her writing in 2015 can never be
considered as a reasonable comparison.
Even I do not write the same as I used to
write twenty years ago.”

Is that what you said to Times Live?

20 **MS MEMELA:** That is what I said.

ADV HOFMEYR: Thank you. And then just two more paragraphs down you are quoted as having said:

“The evidence leader is pushing her own
narrative of making the public believe Mr
Ndzoku paid me to help him with a tender. I

am still trying to understand which tender I
gave to Mr Ndzeke.”

Is that also something you said to the media?

MS MEMELA: Yes.

ADV HOFMEYR: Thank you. So I would like to take each of
those matters and probe them a bit further with you if I may
Ms Memela? So the first criticism as you relayed it to the
media of the approaching Mr Ndzeke’s evidence was that the
investigators of the commission had dealt with the Kholani
10 family as opposed to the Monzi family is that correct?

MS MEMELA: You said Kholani Chair?

CHAIRPERSON: Is it pronounced as Kholani?

MS MEMELA: Kholani yes.

ADV HOFMEYR: I apologise. Kholani.

MS MEMELA: Yes Chair I would expect that because last
time I was repeatedly corrected when I said Hofmeyr instead
of Hofmeyr so I would like the balance.

CHAIRPERSON: Ja.

MS MEMELA: It is Kholani.

20 **ADV HOFMEYR:** Kholani. Thank you. So your criticism was
that the investigators had focussed on the Kholani family and
not the Monzi family, is that right?

MS MEMELA: Yes.

ADV HOFMEYR: Now I would like to explain to you with
reference to the documents why the Kholani family was

chosen to focus on and that is because of the affidavit that your mother purportedly gave in September of 2015. Are you aware of that?

MS MEMELA: I am aware of that.

ADV HOFMEYR: Yes and are you aware that the affidavit says that I inherited the land from my mother – my parents Mr and Mrs Kholani?

MS MEMELA: Yes.

ADV HOFMEYR: You are aware of that?

10 **MS MEMELA:** Yes.

ADV HOFMEYR: Please say yes. Just because the record does not reflect a head nod.

MS MEMELA: I said yes.

ADV HOFMEYR: Thank you. So the investigators went to investigate the version of your mother if it was her version on an affidavit indicating that she had inherited the land from her parents the Kholani's, is that right?

MS MEMELA: Okay are you asking me what the investigators followed?

20 **ADV HOFMEYR:** No I am explaining to you that the reason why they went to investigate the inheritance via the Kholani family is because of what your mother wrote in her alleged affidavit. Do you accept that?

MS MEMELA: I accept on the affidavit but I am not sure if the investigators should follow just one suit.

ADV HOFMEYR: So one source being the source of your mother's alleged affidavit. They should not have focussed on that?

MS MEMELA: No I am not saying they should not but I am saying they should not be limited to that Chair. Because my understanding of the investigation is that you look at the surrounding circumstances to ensure that you get to the bottom of the issues that you are looking for instead of just that I mean taking just one document and focussing on it and
10 say okay this is what I am going to follow. Yes.

ADV HOFMEYR: So just be clear with me. What is the criticism of going to investigate the land held by your mother's parents Mr and Mrs Kholani if what she said in her affidavit related to the sale is the land is fully owned by me and I inherited it from my parents Mr and Mrs Kholani. Can you explain what is then problematic about focussing on that?

MS MEMELA: Okay so I must explain my criticism now?

ADV HOFMEYR: Yes please.

20 **MS MEMELA:** Okay. Chair you – you – my understanding is that she also coming from the villages – her background or...

CHAIRPERSON: I grew up in villages.

MS MEMELA: Ja okay. Ja so I just wanted to understand that because I know Ms Hofmeyr does not. So when – in the villages when you talk about land belonging to somebody

you – you – it is different from talking about the land in Braamfontein or in Bryanston which – which have a what a title deed that has got the name of who and who and – ja – so when my grandmother and her parents moved to Belfast they were coming from Mpendwini being among the family and then he got – she got married to the Kholani family. So when she – oh she got that land – my grandmother because – being the elder daughter of her parent. So then it becomes the land of – belonging to her and her husband July

10 Kholani in a sense. So that is why I am saying if maybe they had – if it was not meant as a bad intention – if they had asked maybe or as they like sending questions and saying okay exactly which family should we talk to regarding this land? Which family will be able to go and point out the land that you talking about? This is the same Chair I would raise the issue of Chief Sigcau as well that after watching Mr Ndzeke's testimony my understanding is that the investigators of this commission should have – I do not know if they have but by listening to the testimony there is nothing

20 that gave me this impression that they had asked Mr Ndzeke first have you met Mr – Chief Sigcau? And then went to Chief Sigcau based on what he has provided. Instead they went to Chief Sigcau and then come with an affidavit let him sit here without going through an affidavit and then put a question to him after and like I mean to confirm on the

affidavit that was found without actually confirming with him. So that is where I was going with this whole thing of – it was not a criticism per se it is just that I was taken aback with the – the way Ms Hofmeyr was actually putting her questions across that – saying I put it to you that this; I put it to you that this as if like I mean it is based on facts which is – we are sitting here I actually have facts that can actually justify what happens here.

CHAIRPERSON: Ms Hofmeyr continue.

10 **ADV HOFMEYR:** Thank you. So the – your mother when she described if this is her affidavit the land she was selling said that it was land fully owned by her inherited from her parents Mr and Mrs Kholani. Are you aware of that?

MS MEMELA: Yes.

ADV HOFMEYR: She then described it. She said it is the land situated at Empendweni next to the Umzumbuvu river in Tabankulu, are you aware of that?

MS MEMELA: Yes I am aware of that.

ADV HOFMEYR: That is the land that she allegedly sold to
20 Mr Ndzeke. It is land in the area over which Chief Sigcau administers and he confirmed in his affidavit to the commission that he had never met Mr Ndzeke and he was aware of no transfer in relation to land falling within that area. Are you aware of that evidence?

MS MEMELA: I will not say yes or no on that question

Chair. The reason why is that after requesting certain documents the affidavit of Chief Sigcau was also provided to us and we went through that. And what Ms Hofmeyr is saying now to the public is that Ms – Chief Sigcau said that is his area and he has never met Mr Ndzeke and my understanding of course Chief Sigcau would not meet Mr Ndzeke for demarcation of land or sale of land. Chief Sigcau my understanding and Ms Hofmeyr just to give you clarity. He is a paramount chief of AmaMpondo. We have got two
10 paramount chiefs of AmaMpondo. Sigcau and Ndamase and not even once Chair where you would see the paramount chief going and meeting people who are coming maybe to buy the land or the demarcation and stuff. I will tell you now Chair I have land – I have a home in Sugarbush. I have never met the paramount chief. But the person who usually is involved there are the representative of the paramount chief being the headman in Xhosa we call them [African language] sometimes. Those are the people that actually sit there and discuss the stuff. But when it comes to selling the
20 land Ms Hofmeyr in the rural areas you do not require a permission of a paramount chief. You do not need to see a paramount chief. And I even made an example of this it is a pity that Ms Hofmeyr maybe or the investigators never really went back to my statement because they would have seen where I said when you sell the land you do not need

anybody's permission. Chair my husband and I can actually decide now that we are selling the land in Sugarbush. We will not even have to notify the body – the headman. The only time that we will notify him is when the new person is coming now to take over and says okay now this is going to be the person or the owner of this. But there is no paper.

CHAIRPERSON: But Ms Memela.

MS MEMELA: Ja.

CHAIRPERSON: How do you talk about selling a piece of
10 land in the context of land that is administered by a chief or Nkhosi? Because that land is not yours in the true sense. You are allowed to occupy it and if you should leave the area the local chief or Nkhosi can allocate it to somebody else. At least that is how things happen in

MS MEMELA: In KZN.

CHAIRPERSON: In KZN. I am under the impression that it is the same thing elsewhere.

MS MEMELA: No Chair I am sorry I am not – I am not saying – I will not say the Judge is lying I will just say maybe
20 you have limited information about the – the land in the villages. There are so many people that sell land at the time.

CHAIRPERSON: Well I know that even in KZN people speak about selling.

MS MEMELA: Yes.

CHAIRPERSON: But my understanding is that legally if it is land falling under an Nkhosi or a chief that – that sale is not valid in law because it is not your land in the same way as in the urban areas. What you can do – what you can do is you take this person who wants to take over your house or where you were allocated by the chief. You take him or her to the local chief to say I am going to be leaving this area. My children live in Umlazi they have said I must go and live with them now because I am old, I have got – there is nobody to
10 look after me here. But here is somebody that would like to get into this land. And if the chief approves then the person takes over. But the chief could – the chief could – could refuse.

MS MEMELA: Ja.

CHAIRPERSON: Ja.

MS MEMELA: Ja Chair remember I had said to you ...

CHAIRPERSON: Ms Mbanjwa what is happening now?

MS MEMELA: Oh.

ADV MBANJWA: [Not speaking into the microphone].

20 **CHAIRPERSON:** Yes but leave the witness to deal with that Ms Mbanjwa. When you re-examine her you can try and get her to give whatever clarification.

ADV MBANJWA: [Not speaking into the microphone].

CHAIRPERSON: Well let us hear from the – from the witness who says she knows how these things happen in the

Eastern Cape.

ADV MBANJWA: [Not speaking into the microphone].

CHAIRPERSON: Ja. No, no that is fine. You will give me assistance when you re-examine. Ja. Okay.

MS MEMELA: Okay Chair you spoke about then it makes it not legal to sell and now as Ms Mbanjwa had raised an issue of now we talking legalities and we do not want to waste the commission's time where we actually explain the Alienation of Lands Act and how it applies in the rural areas.

10 **CHAIRPERSON:** Ja.

MS MEMELA: But we will cover that in the re-examination.

CHAIRPERSON: Okay.

MS MEMELA: But when it comes to the chief as much as I am not the party in the deed of sale it is my mom and Mr Ndzoku but my understanding is there is no way that Mr Ndzoku – yes he said he went to Eastern Cape and met some people but I am sitting here I am saying there is no way that he met Chief Sigcau because the paramount chief does not sit in sale of lands and demarcation of land and all
20 those kind of things.

CHAIRPERSON: Yes.

MS MEMELA: So he may have met either the headman or the other people that maybe representing that area.

CHAIRPERSON: Ja.

MS MEMELA: And when I read the affidavit of Chief Sigcau

he is actually explaining that that okay there are certain people that represent that area you know and he mentioned Ms Nonkubela Nhlebe who I found out that in 2015 actually she was not the chief by then. So you see – so that is where now the problem is where I say if the commission in terms of – because now Ms Hofmeyr talked about fairness. If the commission had done these things fairly in saying okay Mr Ndzeke you said you went to Eastern Cape in your affidavit you bought the land and stuff who did you meet? Mr Ndzeke
 10 is not coming from Eastern Cape Chair. He is coming from Johannesburg. That is my understanding – he is not coming from that area.

CHAIRPERSON: Ja.

MS MEMELA: Right – so for him to be expected to remember people that he met between 2015 and 2016 right I am just – I am just – let me finish Chair.

CHAIRPERSON: Ja.

MS MEMELA: And then – ja I would ex – I would have expected the commission's team.

20 **CHAIRPERSON:** So are you saying that when he said he met Chief Sigcau he – he must have been mistaken because he did not – he could not have met Chief Sigcau.

MS MEMELA: Chair he could have not met Chief Sigcau but let me tell you because I was watching the testimony and I was taking notes.

CHAIRPERSON: Hm.

MS MEMELA: Because I knew that somehow maybe I will have to come and give clarity.

CHAIRPERSON: Hm.

MS MEMELA: The question was put to him but I wanted to address the issue of asking him first before going to him but it is fine. The question was...

CHAIRPERSON: Let us do this – let us do it this way.

MS MEMELA: Ja.

10 **CHAIRPERSON:** Ms Hofmeyr this question you might wish to deal with it now or leave it later on and deal with others. Can I just leave it to you.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: So – I just want us to make progress.

ADV HOFMEYR: Of course.

CHAIRPERSON: I do not want us to sit with what happened last time.

ADV HOFMEYR: Yes indeed.

CHAIRPERSON: Ja.

20 **ADV HOFMEYR:** Or reinterpret what happened last time. Today is for Ms Memela to tell us what she knows about the events right. So you received Chief Sigcau's affidavit Ms Memela?

MS MEMELA: Yes.

ADV HOFMEYR: You have read it have you?

MS MEMELA: We have gone through it yes.

ADV HOFMEYR: Yes. Do you disagree with any part of what he says there?

MS MEMELA: I disagree with lots of things that he had said. Yes and that is exactly what we had prepared Chair to cover in our re-examination using the Alienation or Land Act.

ADV HOFMEYR: So when...

MS MEMELA: So I do not know if you would like...

CHAIRPERSON: Well the re-examination was not going to
10 cover areas that had not been covered by Ms Hofmeyr.

MS MEMELA: Of course ja.

ADV HOFMEYR: You see because what Chief Sigcau describes is exactly what the Chair has put to you.

MS MEMELA: Can we go back? Can you go to – are you sending me?

ADV HOFMEYR: No.

MS MEMELA: Okay can you go to that because you saying...

CHAIRPERSON: No just hang on Ms Memela she will tell
20 you if she wants you to open to a particular page.

ADV HOFMEYR: Because the Chair a moment ago gave you an understanding of how – I am going to put “sale” because the point as I understood it that you made Chair was that sales per se did not take place. It is permissions to occupy that require the authority to have been given by the

Traditional Council.

CHAIRPERSON: Yes that is right.

ADV HOFMEYR: And that is an aspect that Chief Sigcau dealt with in detail in his affidavit. Do you recall seeing that?

MS MEMELA: I recall seeing that.

ADV HOFMEYR: And do you say that he is wrong?

MS MEMELA: I say if he is wrong then I will – we will prove that.

10 **ADV HOFMEYR:** Right.

CHAIRPERSON: Ja well certainly I am familiar with permissions to occupy as well.

ADV HOFMEYR: And...

CHAIRPERSON: Ja okay.

ADV HOFMEYR: We can move from that to the issue in relation to the handwriting expert. Because I understand you have a difference of opinion with Chief Sigcau about how transfers take place, is that correct?

MS MEMELA: That is correct.

20 **ADV HOFMEYR:** You – do you take issue with Mr Ndzeke's evidence which changed over the course of the day? He first said he had met Chief Sigcau. He then later admitted that he had not. Which version do you say is correct? You have any knowledge of it?

MS MEMELA: Chair as I listened to this – because when

you are listening versus when Ms Hofmeyr is questioning. Remember I do know if she listens to her own line of questioning. But I remember when she raised this question. She said Mr Ndzeke did you meet – when you went to Eastern Cape to view the land did you meet the Chief and Mr Ndzeke said yes I met people and I met a chief and the following question was, did – was the Chief Chief Sigcau. And the answer of Mr Ndzeke I even wrote it down he said I met Chief – I think so. He said I think so. Because I am
 10 sure he had not seen even the affidavit at that time. You understand so like it was actually put to him. So there is – to say then a person has agreed as if he is the one who actually started to say okay I met the Chief. I would say Chair the person agreed when he said I went to Eastern Cape viewed the land and I met Chief Sigcau. But the Chief Sigcau part was put to him and he responded and he said I met the Chief I think so. Then the next question.

CHAIRPERSON: Is there – is there another Chief other than Chief Sigcau?

20 **MS MEMELA:** Yes.

CHAIRPERSON: In that area?

MS MEMELA: Yes.

CHAIRPERSON: Who is the other Chief?

MS MEMELA: It is Mr Ndlebe with – during 2015 it was Mr Ndlebe and now from 2016 it was Ms Nonkubele Ndebe who

is the ...

CHAIRPERSON: Is he a chief or is he a headman?

MS MEMELA: They are called chiefs but of course it is – they are representing certain areas like which is one of them is Mpendwini, Mphapha and all the other areas.

CHAIRPERSON: Hm.

MS MEMELA: Yes.

ADV HOFMEYR: But it was Mpendwini land that your mother allegedly sold, correct?

10 **MS MEMELA:** Yes.

ADV HOFMEYR: And Chief Sigcau says that no land did – at Mpendwini that devolved to your mother ever came to his attention and he never granted any permission for it to be sold.

MS MEMELA: Yes.

ADV HOFMEYR: Is that correct.

MS MEMELA: I saw that Chair in his affidavit that it never came – went to his attention. So of course I cannot deny that. Okay it never went to his attention but the fact that the
20 sale happened, it happened.

ADV HOFMEYR: No.

MS MEMELA: And there is no law that says okay it should go to his [?].

CHAIRPERSON: I am sorry you said the fact that? You said the fact that and then I did not hear what you said.

MS MEMELA: Okay I said I do not deny when he says he was not made aware of the sale. You understand because I am not sure about that. But all I am saying is that he – for him to say for the sale to go through he has to give permission that is the part that I am disputing.

CHAIRPERSON: That you are disputing?

MS MEMELA: Ja.

ADV HOFMEYR: Well he does not say he has to give permission to the sale. He himself says it is not correct to
10 think of it as a sale the only thing that can be granted is permission to occupy and no permission to occupy for Mr Ndzeke taking over land in Mpendwini ever came to his attention. Do you accept that that is what Chief Sigcau said?

MS MEMELA: That is what the affidavit says yes.

ADV HOFMEYR: Yes and can you also confirm you have no knowledge of who attended any meeting with Mr Ndzeke in the Eastern Cape because you did not attend that meeting?

MS MEMELA: I was not there yes.

20 **ADV HOFMEYR:** Thank you.

CHAIRPERSON: The land.

MS MEMELA: Yes Chair.

CHAIRPERSON: That was said to have been sold falls within the area under the jurisdiction of Chief Sigcau is that right?

MS MEMELA: It falls under one of the districts under him.

CHAIRPERSON: Yes it is – yes. Now I assume that that would mean that if there was somebody else other than him who could do something about giving somebody that piece of land or whether you call it selling or granting permission to occupy that person would be one of the people who are under Chief Sigcau?

MS MEMELA: Yes it will be ...

CHAIRPERSON: It would be like a headman – maybe a
10 headman – yes.

MS MEMELA: Headman or Chief.

CHAIRPERSON: Yes. Now that person could not be administering the giving of land to people legally in a manner that is not known to the – to Chief Sigcau. If Chief Sigcau says under my – under the Land that falls within my jurisdiction you can only be granted permission to occupy. You cannot be granted anything stronger than that legally. It must include all the areas in – under him otherwise he would say certain areas you can be granted permission to occupy
20 but others you can get the land sold. So as I understand his affidavit, he seems to suggest that when you talk about land that falls under my authority and that means including Izinduna headman under him this is what we talk about when we give somebody land. We talk about permission to occupy. That must be – he must be talking about all land

under him.

MS MEMELA: Chair you – what you have just described Chair is a process that actually follows a certain registration process and procedure.

CHAIRPERSON: But I am taking the process that he is talking about in his affidavit. He – as I understand it and Ms Hofmeyr will tell me if I have misunderstood something.

MS MEMELA: No, ja.

CHAIRPERSON: Permission to occupy is the only system he
10 is talking about that in terms of which somebody can be granted land under him. Is that not so?

MS MEMELA: It is not so Chair and I can tell you now land gets sold in Eastern Cape several times.

CHAIRPERSON: No, no. Let me say.

MS MEMELA: And we...

MS MEMELA: When I say is it not so I am asking not what the position is as you understand it.

MS MEMELA: Not as I understand it.

CHAIRPERSON: I am asking whether that is how he
20 explains it in his affidavit.

MS MEMELA: Yes.

CHAIRPERSON: You accept that?

MS MEMELA: I accept that.

CHAIRPERSON: But you say you do not agree with him?

MS MEMELA: It is not how – yes it is not how it works.

CHAIRPERSON: Ja okay alright.

MS MEMELA: Yes.

ADV HOFMEYR: Thank you. Let us then move to your second issue that you took up in your interview with the media. That was the issue of the handwriting experts report. You have received that have you?

MS MEMELA: Sorry?

ADV HOFMEYR: You have received the handwriting expert's report?

10 **MS MEMELA:** Yes we – we have received in the bundle.

ADV HOFMEYR: Did you notice that she was not asked to compare the signatures on the affidavit and the sale agreement with the handwriting of your mother from twenty years ago. She was asked to compare it to the handwriting of your mother as recently as a year before the alleged affidavit and sale agreement was entered into.

MS MEMELA: Chair if I remember correctly when I looked at that report it is just that I do not have it now here. But when I look at that report of the – ja I am not sure if I must – ja.
20 When I look at the report there is a – the initials of my mom and surname from 1997. Now tell me if that is not more than twenty years ago. So they started 1997 there is 2010. I think there is 2014 I am not sure maybe I might not remember. I am just trying to remember the comparison which is I am thinking they were comparing documents as

back then. And I remember Ms Hofmeyr saying in the public platform that the signatures according to the expert the signatures of Ms Nhlohle had been consistent way back. And when I saw the document I – there is no consistency exactly as I had said when I responded to the journalist that I was talking to who actually wrote something different. I notice one thing that is – when sometimes she would write and Nhlohle sometimes she would write M G Nhlohle, sometimes she would write G Nhlohle. You understand so I
 10 am not sure then where is the consistency there? That is where I was actually trying to understand that then what I saw here in comparison to what I said in this – it is actually exactly the same because that is what I was told. There is no consistency.

CHAIRPERSON: Yes but the question Ms Memela was whether you had noticed that the comparison included your mother's signature a year before the affidavit.

MS MEMELA: Yes but that...

CHAIRPERSON: You notice that?

20 **MS MEMELA:** But starting from twenty years back. Yes.

CHAIRPERSON: Ja okay.

ADV HOFMEYR: Yes but your criticism of the investigation was that all that Ms Buckley had done was taken the affidavit and compared it to a signature from twenty years ago. Do you accept that that is wrong?

MS MEMELA: Okay ja because remember I had not have the document then.

ADV HOFMEYR: I am just asking you now.

MS MEMELA: Yes.

ADV HOFMEYR: Do you accept that what you said to the media is wrong?

MS MEMELA: It is not really wrong but I am just saying I know that you had compared from way back.

ADV HOFMEYR: No how can it not be wrong? Your
10 statement to the media was, Ms Buckley's evidence should be rejected because she was comparing your mother's signature on the affidavit to a signature from twenty years ago. Correct?

MS MEMELA: It should be rejected did I say that? Is that how I am quoted saying?

ADV HOFMEYR: No I am paraphrasing.

MS MEMELA: Thank you. Like you see now when you changing the statement and saying something that I did not say that is not fair. Chair the other thing in terms of...

20 **CHAIRPERSON:** Yes but what is – what is clear – I am sorry Ms Memela. What is clear is that you were rejecting the conclusion of the expert witness of the handwriting witness. That is clear from the article.

MS MEMELA: That is clear.

CHAIRPERSON: Yes.

MS MEMELA: And also – and also Chair after receiving the documents that show the report of the – of this lady there is a disclaimer there that Ms Hofmeyr chose not to read for the public to see.

CHAIRPERSON: No you are going to something else. Let us go where it goes step by step.

MS MEMELA: Okay.

CHAIRPERSON: You accept that in the article you criticised the investigator – the expert – handwriting expert on the
10 basis that she did not compare – she did not use recent signatures. She looked at signatures that were twenty years or more old, is that right? You accept that that is your – that was your criticism?

MS MEMELA: Chair can you take me back there Ms Hofmeyr?

ADV HOFMEYR: It is page 1145 in the middle of the page. I will read it into the record just for convenience. What you are quoted to have said is:

20 “For the inquiry handwriting expert to compare how she wrote her name more than twenty years ago when she did an affidavit for me to get an ID versus her writing in 2015 can never be considered as a reasonable comparison. Even I do not write the same as I used to write twenty years ago.”

MS MEMELA: Yes.

CHAIRPERSON: So the question was, do you accept now that the expert did look at a more recent signature, namely, even the one that was a year before the affidavit.

MS MEMELA: Yes, the expert... after I saw the document. Yes, looked at I think about four ...[intervenes]

CHAIRPERSON: Ja.

MS MEMELA: ...different signatures of my mom. But ...[intervenes]

10 **CHAIRPERSON:** Oh, now you accept?

MS MEMELA: Yes, but Ms Hofmeyr said in public that...[intervenes]

CHAIRPERSON: No, no. Leave out what she said.

MS MEMELA: ...there was terms ...[intervenes]

CHAIRPERSON: Leave out what she said.

MS MEMELA: Okay.

CHAIRPERSON: So you accept that now the handwriting had looked at more recent signatures?

MS MEMELA: That looked at ...[intervenes]

20 **CHAIRPERSON:** Yes.

MS MBANJWA: Ja, and ...[intervenes]

CHAIRPERSON: And Ms Hofmeyr's question was, therefore, you should accept also that it was not correct to suggest that she had not looked at recent signatures? She had only looked at ...[intervenes]

MS MEMELA: No, that is not ...[intervenes]

CHAIRPERSON: ...a signature that was about 20-years-old?

MS MEMELA: [No audible reply]

CHAIRPERSON: H'm?

MS MEMELA: That is not what I said Chair that she has not looked at recent signatures. I talked about 20-years and 2015. Of course, 2015, that is the last one I think I know that my mom, they had what referred to.

10 **CHAIRPERSON:** H'm.

MS MEMELA: Ja. Ms Hofmeyr actually said this. You know, you see, on public.

CHAIRPERSON: Ja.

MS MEMELA: Exactly.

CHAIRPERSON: We are not... I am not asking about that what she said in public. I am just asking about what she was asking now. Ms Mbanjwa?

MS MBANJWA: [Indistinct] [microphone not switched on.]

CHAIRPERSON: Sorry?

20 **MS MBANJWA:** The reason why we are objecting to this. The witness is struggling because the concession that she is supposed to make is not what she said.

What she said, she said, what did the expert said if her mother's handwriting has been consistent throughout.

And she said that consistency can never be there

because even her own mother's handwriting which was...
when she was getting an ID and the one in 2015 was
different. So it is not as if she said...

And now, what she is now demanded to do now is to
make a concession that when she spoke to the media, she
unfairly criticised the Commission.

And the other reason why I object to that kind of
questioning is because it has got nothing to do with the
mandate of the Commission. It has got something to do with
10 the integrity of the Commission.

And the truth of the matter is. These hearings are
televised because people are going to criticise. It is just a
fact. So if we are going to come here and worry
...[intervenes]

CHAIRPERSON: Ms Memela ...[intervenes]

MS MBANJWA: ...criticism ...[intervenes]

CHAIRPERSON: Ms Memela.

MS MBANJWA: Yes, Chair?

CHAIRPERSON: Fraud and corruption is in the Terms of
20 Reference of this Commission.

MS MBANJWA: Yes, but ...[intervenes]

CHAIRPERSON: Please continue Ms Hofmeyr.

MS MBANJWA: But not ...[intervenes]

ADV HOFMEYR: Thank you, Chair.

MS MBANJWA: But not to the criticism of how the

questions are done. This is not about fraud and Commission here Chair. It has moved now. It has become now a personally issue that either the investigators of the Commission or whatever. So we are definitely... we refer that the experts ...[intervenes]

CHAIRPERSON: Ms Mbanjwa, please sit down.

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: Continue, Ms Hofmeyr.

ADV HOFMEYR: Thank you, Chair. Ms Memela, are you a
10 handwriting expert?

MS MEMELA: Of course I am not.

ADV HOFMEYR: So do you have any basis to dispute the conclusions drawn by Ms Buckley who is a handwriting expert?

MS MEMELA: The basis that I would have to reject that is the fact that ...[intervenes]

ADV HOFMEYR: Could you answer the first question first? Do you reject the conclusions that she draw in her report?

MS MEMELA: I am rejecting it.

20 **ADV HOFMEYR**: Can you explain why?

MS MEMELA: I reject them. Can I explain why?

ADV HOFMEYR: Yes, please.

MS MEMELA: Chair, Ms Hofmeyr did not read the disclaimer when she made that statement from that report. We were just sent the so disclaimer from the expert, the

handwriting expert where she said it shall be known.

Of course, not word for word because I did not memorise that. But she said it should be noted that.... she had made comparison of the copies. We are talking about handwriting here, Chair.

She made comparisons of the copies, not the original. When you are talking about where you are trying to make sure that is this not as handwriting and stuff.

The only hundred per cent accurate result is when you
10 compare originals to originals. She even explained that when you compare copies, especially contact(?) copies with different years, the font changes.

She said that it is there. But it was never read for the public to actually understand that part. Because, I mean, the only statement that was made that okay automatically it must be forgery.

CHAIRPERSON: Okay so that is the basis for rejection ...[intervenes]

MS MEMELA: That my basis of rejection, yes.

20 **CHAIRPERSON:** Ja, okay.

ADV HOFMEYR: Let us go to her conclusion of her report then. You will find it in Exhibit DD26.B. Chair, that will need to be handed to you. It was in Mr Ndzeke's bundles.

MS MEMELA: DD2016.B?

CHAIRPERSON: Just finish with the one ...[intervenes]

ADV HOFMEYR: It is B. Sorry, BB26B. And you will find the conclusion of Ms Buckley's report at page 298.

MS MEMELA: Eight...?

ADV HOFMEYR: 298. Two-hundred and ninety-eight.

MS MEMELA: [No audible reply]

ADV HOFMEYR: So her conclusion appears at page 298.

MS MEMELA: Okay, sorry, sorry. Apologies.

CHAIRPERSON: You have not found it?

MS MEMELA: I am just going through it and I had a request

10 Chair.

CHAIRPERSON: Well, do not go through it. Wait for the question. The question might not need you to go through it.

MS MEMELA: Chair, I do not want to go through the whole of it.

CHAIRPERSON: Ja, but ...[intervenes]

MS MEMELA: I just want to ...[intervenes]

CHAIRPERSON: ...all I am saying is ...[intervenes]

MS MEMELA: Remember, I had mentioned her disclaimer on the report ...[intervenes]

20 **CHAIRPERSON:** Yes, but she is not asking you about the disclaimer.

MS MEMELA: Huh? No, she was asking... she is asking us to go to the conclusion. So I was going to request, if you allow, that before she goes to the conclusion. Can her disclaimer, the red ...[intervenes]

CHAIRPERSON: No, but you have already said what the disclaimer says.

MS MEMELA: No, but I have heard. It was not ...[intervenes]

CHAIRPERSON: Or are you not sure it says what it says?

MS MEMELA: It was not word for word. Of course, I might not ...[intervenes]

CHAIRPERSON: Ja. Let her continue with that question. If she wants to go through the disclaimer later, she can do so.

10 If she wants to start there now, it is fine.

MS MEMELA: Okay.

ADV HOFMEYR: I am happy to go to the disclaimer.

CHAIRPERSON: Ja.

ADV HOFMEYR: Please read it through into the record. What page are you at?

MS MEMELA: I am page 295.

ADV HOFMEYR: Thank you. And what is the disclaimer?

MS MEMELA: Can I read, Chair?

ADV HOFMEYR: [No audible reply]

20 **MS MEMELA:** Ja.

“Copies of the document were submitted for examination. Although a clear digital phone copy can yield almost as much information as the original. Repeated copying affects the quality of the writing and printing. A first generation copy (copy

from original) will display slight loss of minute detail and some pixilation in the lines. A copy of a copy will have more loss of definition and more pixilation. The lines lose more definition with each subsequent copy and the quality of the printing and writing get progressively worse. The pen pressure of writing cannot be assessed on the copies. The possibility of electronic manipulation it is in parts and place and/or disguise (glossary) cannot be excluded on
10 copies. This examination is therefore based on the aspects of the writing that can be discerned despite the copying. All documentation have been examined with aid of microscopes and measuring instruments.”

ADV HOFMEYR: Yes, so that is the disclaimer.

MS MEMELA: Yes.

ADV HOFMEYR: She says for example, she cannot assess pen pressure because she is dealing with copies. And she says that her examination is therefore based on the writing on copies. And she goes to her conclusion at 298 and she
20 says the following:

“Although copies were examined, the dissimilarities or similarities in individual writing characteristics are profound.

a) It is my professional opinion that the questioned signatures were not made by the same writer but

executed the known to be genuine signatures N G Hlohlela(?).

b) All the writing on affidavit that was question 1 and sale agreement question 2 was done by one and the same hand. The individual writing characteristics present in the writing on the questioned documents are also present in the Q1 and Q2 signatures purported to be by one, NG Hlohlela.”

10 Do you see that?

MS MEMELA: Ja.

ADV HOFMEYR: Ms Memela, I put it to you that that conclusion is entirely consistent with the disclaimer. The disclaimer says there are limitations to assessing copies.

MS MEMELA: Yes.

ADV HOFMEYR: Are taking those into account, for example, I have not looked a pen pressure issues.

MS MEMELA: H'm.

20 **ADV HOFMEYR:** But despite the fact that I am dealing with copies, there are “profound characteristics” that are dissimilar. And she nonetheless concludes, in her professional opinion, that the questioned signatures were not made by the same writer as the known to be genuine signatures. Do you dispute that conclusion?

MS MEMELA: I dispute that conclusion.

ADV HOFMEYR: And the basis is because of the disclaimer. Is that correct?

MS MEMELA: No, on the basis of the disclaimer, plus, on the basis of the fact that the handwriting of my mom kept on changing, whereas she signs as the year goes by.

ADV HOFMEYR: Yes.

MS MEMELA: Ja.

ADV HOFMEYR: That is even reflected in the examples that she attaches.

10 **MS MEMELA:** H'm.

ADV HOFMEYR: She changed initials over time, correct?

MS MEMELA: Yes.

ADV HOFMEYR: And despite that, in her professional opinion, she concluded that the signatures on the questioned documents, affidavit and sale agreement, were not on the same hand that the... all the other genuine signatures over time. Do you accept that that was her conclusion?

MS MEMELA: You are saying that gave all the other genuine signatures all the time?

20 **ADV HOFMEYR:** Over time.

MS MEMELA: Over time.

ADV HOFMEYR: The genuine signatures ...[intervenes]

MS MEMELA: Can you read that?

ADV HOFMEYR: ...remember went from 1997 ...[intervenes]

MS MEMELA: Ja?

ADV HOFMEYR: ...to 2014.

MS MEMELA: Can you back? Can you show me?

ADV HOFMEYR: Where ...[intervenes]

MS MEMELA: That document.

ADV HOFMEYR: We are looking at it.

MS MEMELA: No, no. The... where there is my mother's initials and surname which ...[intervenes]

ADV HOFMEYR: Yes, you... it is over the page. You go to page 300. That is part of her report.

10 **MS MEMELA:** [No audible reply]

ADV HOFMEYR: You see? The first two are the questioned signatures, Q1 and Q2. And then you have ST7, ST5, ST6 and ST2. Those are the ones that were taken from 2014, 2010, 2010 and 1997.

And she says, in her professional opinion, Question 1 and Question 2's signatures were not written by the same hand that wrote all of those other signatures over time.

MS MEMELA: So are you... where we are, that is page 300?

20 **CHAIRPERSON:** Ja, I think so.

MS MEMELA: Ja, it is... I may not be an expert, writing expert but the consistence that Ms Hofmeyr keeps on referring to, saying that okay it has happened from 1997 up to 2014. For instance, my side, to the end it is different.

ADV HOFMEYR: Ms Memela, you have already confirmed

you are not a handwriting expert.

MS MEMELA: Ja.

CHAIRPERSON: [Indistinct] [microphone not switched on.]

MS MEMELA: Exactly. Then I think Chair, it is either... after speaking to my lawyer, we will request that we also take this through our expert so that we can submit something professional from an expert. But I am saying, I am rejecting it from what I see.

ADV HOFMEYR: Ms Memela, you were given this over a
10 week ago. If you wanted to contest it, it would have been appropriate for you to have... introduced that today, would it not?

MS MEMELA: It was received ...[intervenes]

ADV HOFMEYR: Do you want me to give you the date?

MS MEMELA: H'm.

ADV HOFMEYR: It was provided on the 14th... sorry. It was provided on the 14th of September. That is much more than a week ago.

CHAIRPERSON: That is two weeks ago or just a little over
20 two weeks ago.

ADV HOFMEYR: Over two weeks.

MS MEMELA: So that means Chair, we are not allowed to get an expert now, since we were given this more than two weeks ago?

CHAIRPERSON: Well, you can make the request but what

Ms Hofmeyr is putting to you is that you had an opportunity after you were given this to seek, ask an expert, handwriting expert to do the same and written a report.

MS MEMELA: Chair, let me give an explanation for that, hoping you understand. The reason maybe that we did not act within the two weeks that we were given this document is that I am not party to this, to the sale and also the affidavit.

Therefore, I did not know that I could be allowed then to be the one who confirms and go and get the expert, a writing expert to... so if it is allowed for me to do that, then I will appreciate that.

CHAIRPERSON: Okay. Ms Mbanjwa.

MS MBANJWA: I just wanted to correct Ms Hofmeyr. Thank you, Chair. Remember what happened is, when these documents were given to us legal representatives of Ms Memela, we were not told that the Commission is going to seek to re-examine.

We only came to know that there is going to be a re-examination on the 28th of September. Thank you. So consequent, we did not have two weeks. We actually had from the 28th of September until now.

CHAIRPERSON: But why would it make a difference whether you were told there would be a request to question here again? Because if evidence was led that seemed to contradict what Ms Memela may have said, then you would

be the one to see how you could challenge that evidence.

MS MBANJWA: Thank you, Chair. Because you are using the word, how do we want to challenge the evidence? We were going to challenge the evidence as you are going to challenge it now in re-examination. Not by evoking another expert, another expert witness but by a different means.

We are going to show them when we come in here. She is now being re-examined or cross-examined on that expert.

That was not our part of our strategy. And it is for that
10 reason Chair why we said, we wanted to go first because we would have covered these issues. Thank you, Chair.

CHAIRPERSON: Let us continue, Ms Hofmeyr. Ms Mbanjwa, just remember that in terms of the regulations, re-examination is to clarify and clarify evidence that has been led. So the leading of evidence which had not yet been dealt with Ms Mamela might have challenges. But let us continue. You will re-examine at some stage when the time comes.

ADV HOFMEYR: Thank you, Chair. Let us ...[intervenes]

MS MBANJWA: You see Chair, there is going to be another
20 procedural issue. Sorry, that I am coming in. Because the procedural question is. There is now this evidence of Mr Ndzoku that has been put before this Commission.

She is now examined on that evidence and now the question is, must we again apply afresh to re-examine on that evidence of Mr Ndzoku?

We try to read and understand the rules of the Commission but we could not deal with this very fine balance.

CHAIRPERSON: No, Ms Mbanjwa you... I will let you re-examine on the evidence ...[intervenes]

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: ...on the evidence that has been led. The only limitation is the time that we talked about. Ms Hofmeyr.

ADV HOFMEYR: Thank you, Chair. I would just like for the
10 record to correct a few errors in relation to dates that my
learned friend referenced. It was on the 14th of September
that Ms Memela was provided with these various affidavits
form Mr Ndzeke's evidence.

That is because that was preceded by the invitation to Ms Memela to provide on affidavit her response to Mr Ndzeke.

It was not on the 28th of September that Ms Memela was alerted to the fact that we would request an opportunity to question. That was the 23rd of September. So just to get the
20 chronology right.

MS MEMELA: Ja, let me also add ...[intervenes]

ADV HOFMEYR: There is first an invitation ...[intervenes]

CHAIRPERSON: Hang on. Hang on, Ms Memela.

ADV HOFMEYR: There is first an invitation to provide an affidavit in which response to which there is a request for a

whole host of documents. Those included the affidavit of Ms Buckley.

Those were then provided on the 14th of September and then when no affidavit had been produced by a week later, the 23rd of September, Ms Memela was alerted to the fact that the request would be made to question to her.

So that is the chronology in relation to the exchange of information. I understand Ms Mbanjwa to say that it had not been their strategy to attack the expert's evidence.

10 They are going to deal with it in some other way in relation to the questioning. So we will leave it at that, if we may Chair. Thank you.

CHAIRPERSON: Ja. You still want to say something?

MS MEMELA: Ja, I just need to add something.

CHAIRPERSON: Ja.

MS MEMELA: Remember, the... just to correct Ms Hofmeyr. The documentation that was sent to my lawyer was requested by us. So it is not the Commission that decided okay you see, I think... we think this is fair but ...[intervenes]

20 **CHAIRPERSON:** Yes, but if you got the documentation, why does it matter whether it was because you requested or ...[intervenes]

MS MEMELA: No, but Ms Hofmeyr is saying it as if we were given so that we can prepare.

CHAIRPERSON: Ja.

MS MEMELA: We had to ask for them based on what was putting ...[intervenes]

CHAIRPERSON: Ms Hofmeyr, please continue.

ADV HOFMEYR: Thank you. In respect of Mr Ndzeke's concession that the sale agreement was not entered into in 2015 but was entered into in 2019. Do you have any other basis on which to challenge his concession, than the two that we have traversed?

We traversed the problems you had with the handwriting
10 expert and the challenge that you had with the Commission having focused the Tholane(?) family as opposed to the Manzi(?) family? Are there any other grounds?

MS MEMELA: The basis for this Chair is that. Remember when I was giving my testimony, I said there is... there are documents that were made in terms of the sale of land.

And I remember the documents were there as back as between 2016 and 2016. You know why I remember this? It is because Mr Ndzeke insisted before he paid the money that he...

20 Since there is no title deed, he needed some sort of a documentation that assures him, that will satisfy him that okay when he start with whatever he wants to do with the land, he will have a documentation.

And I remember he insisted in... he was told that there are no document in the rural areas. And then he said: No,

but I need something signed that I will hold onto.

You know, so I think then my mom gave it to me in... between 2016... 2015 and 2016. I know that in 2015 she was here for her eye operation and then she went home. And then I think I went home as well.

And I came back with the affidavit and gave it to Mr Ndzeku. And then the deed of sale followed after that. So that is why I am saying, for me, I do understand. Because remember Chair, first of all ...[intervenes]

10 **CHAIRPERSON**: No, hang on. I do not want us to ...[intervenes]

MS MEMELA: You do not understand?

CHAIRPERSON: To ...[intervenes]

MS MEMELA: Oh, you do not want me to ...[intervenes]

CHAIRPERSON: ...have long stories of ...[intervenes]

MS MEMELA: Okay.

CHAIRPERSON: ...on simple questions.

MS MEMELA: Yes.

CHAIRPERSON: Now the question was ...[intervenes]

20 **MS MEMELA**: Ja.

CHAIRPERSON: ...in the light of Mr Ndzeku's concession that the agreement was only signed in 2019 by him.

MS MEMELA: Yes.

CHAIRPERSON: If you have any basis for suggesting that the agreement was done in 2015, other the fact that you

have challenged the issue of the conclusion of the handwriting expert and you have challenged the issue of why the investigators went to certain people and not to other people.

MS MEMELA: Yes, I am still challenging that.

CHAIRPERSON: Ja. so you ...[intervenes]

MS MEMELA: I said the basis that I knew... I know that the documents were done during that time.

CHAIRPERSON: So ...[intervenes]

10 **MS MEMELA**: I am not sure if... when Mr Ndzeke was talking about signing. And I remember, the question again was put to him based on the evidence, expert evidence that he said he has not seen. And ...[intervenes]

CHAIRPERSON: So you maintain that the agreement was signed by Mr Ndzeke in 2015, not 2019?

MS MEMELA: I am not talking on behalf of Mr Ndzeke. I am talking ...[intervenes]

CHAIRPERSON: No, in terms of what you know.

MS MEMELA: No, I am saying, I am not ...[intervenes]

20 **CHAIRPERSON**: What is it that you know in terms of ...[intervenes]

MS MEMELA: Remember Chair, Mr Ndzeke testified on his behalf. For me, I am saying ...[intervenes]

CHAIRPERSON: Yes, but he testified about a transaction that involves you and your mother.

MS MEMELA: The transaction that involves my mother.

CHAIRPERSON: Yes, but when it going from it
...[intervenes]

MS MEMELA: The documents were there Chair between
2015 and 2016. And these documents were made to satisfy
Mr Ndzeke that the land is there and my mom owns the land
and therefore he can take over when he is ready to do so.

CHAIRPERSON: So are you saying ...[intervenes]

MS MEMELA: So I am saying from my mother's side, Chair.

10 **CHAIRPERSON:** Ja, but do you know when Mr Ndzeke
signed the sale?

MS MEMELA: Sorry?

CHAIRPERSON: Do you know when it was that Mr Ndzeke
signed the agreement?

MS MEMELA: No, I do not remember.

CHAIRPERSON: You do not know?

MS MEMELA: Yes, but ...[intervenes]

CHAIRPERSON: Yes. He has said it was 2019. Do you
accept that?

20 **MS MEMELA:** He responded to the question that was put to
him.

CHAIRPERSON: Yes.

MS MEMELA: Yes.

CHAIRPERSON: Whether he responded to a question or
whether he has told me without being asked but he said it

was 2019 when he signed.

MS MEMELA: Chair, but ...[intervenes]

CHAIRPERSON: The question to you is. Do you accept that evidence as, of his, that he only signed the agreement in 2019?

MS MEMELA: Chair, I am not in the right position to accept or deny.

CHAIRPERSON: H'm?

MS MEMELA: I am not in the right position to accept.

10 Because I remember, his lawyer even stood up and challenged the issue of the year. Because he said it would be based on speculation.

CHAIRPERSON: So ...[intervenes]

MS MEMELA: He said he was forced to actually answer and he said, based on whatever expert then and whatever, then I guess then, maybe it was signed in 2019.

CHAIRPERSON: So ...[intervenes]

MS MEMELA: Even when he is responding to that 2019, he was still not sure.

20 **CHAIRPERSON:** So you do not take issue with his evidence that he signed the agreement in 2019 or do you?

MS MEMELA: Chair, okay ...[intervenes]

CHAIRPERSON: Or you do not know?

MS MEMELA: [No audible reply]

CHAIRPERSON: I am just trying to establish where we

stand.

MS MEMELA: No, but the problem Chair of questioning is that. When you say I do not take issue. The fact remains is that there is... there was the deed of sale.

CHAIRPERSON: Sorry?

MS MEMELA: The issue... the fact of the matter is that there was a deed of sale. From my mother's side, it had already been there. It is in 2015 and 2016.

CHAIRPERSON: Yes.

10 **MS MEMELA**: The affidavit of my mom was given to Mr Ndzeke between 2015 and 2016.

CHAIRPERSON: If it is true that Mr Ndzeke signed in 2019.

MS MEMELA: H'm?

CHAIRPERSON: Then it could not... there could not have been a sale before he signed, is it not?

MS MEMELA: No, there could have been a sale.

CHAIRPERSON: Ja.

MS MEMELA: There could have been a sale.

CHAIRPERSON: You say there could have been?

20 **MS MEMELA**: There could have been a sale before he signed.

CHAIRPERSON: And an agreement. And yet, without his signature.

MS MEMELA: Yes, there could have been a sale.

CHAIRPERSON: With only one party signed... having

signed?

MS MEMELA: Yes, Chair. Remember, we explained this but you said, we must not take long to explain.

CHAIRPERSON: Yes?

MS MEMELA: And I said, in the villages, we do not sign or search or deed of sale and whatever but these documents were done because ...[intervenes]

CHAIRPERSON: Ms Hofmeyr, continue.

ADV HOFMEYR: Thank you. I understand you to dispute
10 Mr Ndzeke's concession.

MS MEMELA: H'm?

ADV HOFMEYR: That the affidavit was forged because you say you know your mother attested to it in September of 2015. Is that correct?

MS MEMELA: I said my mother gave me the affidavit already signed ...[intervenes]

ADV HOFMEYR: Right.

MS MEMELA: ...to give it to Mr Ndzeke because Mr Ndzeke was insisting that ...[intervenes]

20 **ADV HOFMEYR**: Yes.

MS MEMELA: ...since there was not title deed, I needed documentation.

ADV HOFMEYR: Right. And that is despite the fact that that affidavit bears of 2019. Is that correct? You still say, you got in 2015?

MS MEMELA: The affidavit Chair bears the date of 2015 where it was signed and commissioned. The date of 2019 was where, you see an error issue, where you actually say... because I remember, Mr Ndzeke even asked me, what about this? And I said but this part is not filled in.

So it does not make this affidavit invalid at all. And my understanding Chair also, because these documents were made for him. It would have been him who went...

I think he guys ...[indistinct] So let me go and get an
10 expert because it was to satisfy him.

CHAIRPERSON: Ms Hofmeyr ...[intervenes]

MS MEMELA: So when Ms Hofmeyr is talking about forgery, was the affidavit forged to rob Mr Ndzeke? Forged for who?

CHAIRPERSON: Ms Hofmeyr, please continue.

MS MEMELA: Yes.

ADV HOFMEYR: Thank you. And then just again, you say you dispute Mr Ndzeke's version because you know the sale was concluded in 2015. Is that correct?

MS MEMELA: I know the land was in 2015.

20 **ADV HOFMEYR:** Yes. The sale agreement, was it concluded in 2015, Ms Memela?

MS MEMELA: The sale agreement was already there in 2015. Yes.

ADV HOFMEYR: It was?

MS MEMELA: Ja.

ADV HOFMEYR: Right.

MS MEMELA: H'm.

ADV HOFMEYR: And it referred to a dispute resolution provision that anticipated the Legal Practice Council ...[intervenes]

MS MEMELA: Yes.

ADV HOFMEYR: ...who would be appointed at a time when it did not exist.

MS MEMELA: Ja.

10 **ADV HOFMEYR:** Correct?

MS MEMELA: It talks about the Legal Council that did not exist.

ADV HOFMEYR: Yes.

MS MEMELA: But the Legal Council or Practice Council Act was already promulgated in 2014.

ADV HOFMEYR: Yes, Ms Memela it was.

MS MEMELA: So... Thank you. As much as I was not the drafter of that document, I can... we cannot say okay all the contracts Chair should be exhaustive.

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

MS MEMELA: Okay.

CHAIRPERSON: Ms Memela, is the position not that in 2015, there was not Legal Practise Council that was operational, that had been established?

MS MEMELA: Yes but remember Chair. When we talk

about dispute resolution, we are talking about something that will happen later ...[intervenes]

CHAIRPERSON: Yes, but ...[intervenes]

MS MEMELA: ...in making ...[intervenes]

CHAIRPERSON: No, no. But there was no Legal Practice Council in operation at the time in 2015.

MS MEMELA: But there was ...[intervenes]

CHAIRPERSON: Is it not?

MS MEMELA: There was a Legal Council Act.

10 **CHAIRPERSON**: Ms Memela ...[intervenes]

MS MEMELA: ...that promulgated in 2014.

CHAIRPERSON: Listen to me carefully.

MS MEMELA: Ja.

CHAIRPERSON: You agree that in 2015, there was no Legal Practise Council in operation?

MS MEMELA: Yes, the council.

CHAIRPERSON: Actually, there was no Legal Practice Council at all because if it was still a bill and not an act, it... there was no such structure. Is it not?

20 **ADV HOFMEYR**: Ja.

MS MEMELA: Yes ...[intervenes]

CHAIRPERSON: Was it not still a bill in 2015?

MS MEMELA: Sorry ...[intervenes]

ADV HOFMEYR: No, it was enacted in 2015.

CHAIRPERSON: Ja.

ADV HOFMEYR: But it had a series of sections that would be brought into operation.

CHAIRPERSON: Into operation, years.

ADV HOFMEYR: And the establishment of the council occurred in October of 2018.

CHAIRPERSON: Yes, but there was simply no Legal Practice Council in operation in 2015.

MS MEMELA: Yes, I agree. There was no Legal Practice Council.

10 **CHAIRPERSON:** Yes.

MS MEMELA: Yes.

CHAIRPERSON: So now ...[intervenes]

MS MEMELA: But the act was already there.

CHAIRPERSON: ...how could people in 2015, when they look for somebody who would do their... resolve their disputes, say that choose a structure that is not in operation ...[intervenes]

MS MEMELA: But if you ...[intervenes]

CHAIRPERSON: ...when there were structures in operation
20 that they could choose?

MS MEMELA: Chair, if it is so that the other dispute resolution, it does not just jump to a Legal Practice Council. It starts, okay the parties will do... will go there first. And if this fails, they go there. And then if they...

You see, now I am talking on behalf of the drafter but I

do not know. But I am just saying, there were processes that were listed there. Chair, can I give an example?

CHAIRPERSON: [No audible reply]

MS MEMELA: Remember, the Companies Act was promulgated in 2008, right? But it was passed in 2011. But I can tell you now, most lawyers in the commercial sector, they were already referring to some of the sections of the Companies Act as far back as 2009 and 2010.

10 So I am just saying, I am not defending because I was not the drafter but if I was the drafter, I would defend it by saying that there is nothing that is stopping you from referring to something that you know that is going to happen in the future.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Thank you. I would then like to go to why that R 2.5 million was paid because you earlier said it is a sale agreement between your mother and Mr Ndzeke, correct?

MS MEMELA: H'm.

20 **ADV HOFMEYR:** But it referred to you benefiting from it, did it not?

MS MEMELA: It referred...?

ADV HOFMEYR: To you benefiting from the money that would be paid pursuant to the agreement, did it not?

MS MEMELA: Yes. Remember, it is during my re-exam...

during my testimony in Feb, Chair. I gave the testimony that the plan was for me to buy the land in covert in East London.

So the plan was for my mother to help me buy that land, which was two point eight, the one that was in East London.

Then I... then in 2016, I changed my mind because the land in East London, it took longer for proclamation to come in. And that is when we cannot sell it. And said okay let me use the money for that, and then my mom gave me the 1.5, not the 2.5 that Ms Hofmeyr keeps on referring to.

10 The deposit for my house in Bedfordview was for 1.5 and the remainder, it was the bond.

ADV HOFMEYR: Oh, Ms Memela, is your evidence before this Commission today that you did not utilise the full R2.5 million that was paid by JM Aviation to Mbanjwa Incorporated?

MS MEMELA: To buy...?

ADV HOFMEYR: You have just said that I keep referring to 2.5 million.

MS MEMELA: Ja.

20 **ADV HOFMEYR:** When in fact only 1.5 million was ...[intervenes]

MS MEMELA: Yes, I am saying, Chair, the way you keep on saying it, Ms Hofmeyr, is that it is as if this – the whole 2.5 went to the house as a deposit and it was to benefit me to buy my house in Bedfordview. She does not – she no

longer wants to refer the land in Cove Ridge which is – that was the reason why my mom was going to help me to buy that land in Cove Ridge. The Bedfordview issue came into account only later in 2016.

ADV HOFMEYR: Ms Memela, I do want to go to Cove Ridge very, very pertinently but I need to get your evidence on this correct.

MS MEMELA: Okay.

ADV HOFMEYR: Do you accept that the 2.5 that JM
10 Aviation paid to Mbanjwa Incorporated on the 6 May 2016 was used by you, the whole 2.5 million?

MS MEMELA: Not the whole 2.5 million.

ADV HOFMEYR: How much was used by you?

MS MEMELA: The deposit for 1.5, Chair. And I remember some I – it was used to renovate my mom's home and help her because she had a heart problem and then she was taken to specialists and all that, so there was a lot that it was used for.

ADV HOFMEYR: You do not remember being paid more
20 than R800 000 out of the transaction had gone through on the home.

MS MEMELA: Yes.

ADV HOFMEYR: Into your bank account which you then used?

MS MEMELA: Yes, I am saying – remember, you even

asked, Chair, during my last examination that okay, why could this money not go directly to your mom and I said no, it went to the lawyers then the other came to me. So when I say it was not used solely for me, it was used for my mom's health, it was used to renovate my mom's home as well.

ADV HOFMEYR: How much was used for your mom?

MS MEMELA: Then I do not remember that amount but I renovated the whole house [inaudible – speaking
10 simultaneously]

ADV HOFMEYR: So you accept that you received 1.5 million to pay the deposit on the house?

MS MEMELA: Ja.

ADV HOFMEYR: And you received after the transaction I think it was 886 000.

MS MEMELA: Yes, ja.

ADV HOFMEYR: My colleagues will add that up for me but that is very close to 2.5 million. We will do the calculation now. So there would have been a little bit of
20 the 2.5 million that was not used by you directly, is that correct?

MS MEMELA: No, Chair, then Ms Hofmeyr is talking about the 1.5, right? Plus the 800 that was left from the money that went to the ...[intervenes]

CHAIRPERSON: Ja, that is 2.3.

MS MEMELA: That went to the lawyers, yes. So then she is taking the 200 thinking that okay, that is the one that was used for my mom. I am saying that whatever that I did for my mom was coming from that 800 000 that came to me, yes.

ADV HOFMEYR: So when we go to your bank statements you will be able to show me where you use it for your mother.

MS MEMELA: Okay, so how am going – must I show that I
10 bought tiles in 2015?

ADV HOFMEYR: Yes.

MS MEMELA: And do that and stuff?

ADV HOFMEYR: Yes because we have your bank statement.

MS MEMELA: Yes from the bank statement.

ADV HOFMEYR: From the moment the 886 000 came into your account till it was depleted. You will be able to show me there where you paid for something for your mother, will you?

20 **CHAIRPERSON:** Ms Mbanjwa?

MS MBANJWA: But Chair, really, are you telling me that now these things going to be extended to us now going to brought the bank statements? Is the issue not here being simple, the receipt of the 2.5 million which has not been denied?

CHAIRPERSON: Ms Mbanjwa, Ms Hofmeyr wants to know exactly how much of the 2.5 million was used for Ms Memela's benefit, how much of it was not used for her benefit because ...[intervenes]

MS MBANJWA: But it is irrelevant Chair. What is the relevance of that?

CHAIRPERSON: Ms Mbanjwa, I am speaking at the moment.

MS MBANJWA: Apologies.

10 **CHAIRPERSON:** Okay. Ms Hofmeyr wants to establish how much of the 2.5 million was used for the benefit of Ms Memela, how much of it was not used for her benefit because she has said that it was not the whole amount of 2.5 that was used for her benefit.

MS MBANJWA: Yes.

CHAIRPERSON: And I would like to know that as well, how much of it was used for her, how much of it was not used for her.

MS MBANJWA: And the question, Chair, is irrelevant
20 because the issue here is it has not been contested that she received the money ...[intervenes]

CHAIRPERSON: Please sit down, Ms Mbanjwa.

MS MBANJWA: So what is the relevance?

CHAIRPERSON: Please sit down, carry on, Ms Hofmeyr.

ADV HOFMEYR: Thank you. So just to return, if we

looked at your bank statements after you received the 886 000 from the transferring attorneys on the Bedfordview house, would we be able to see what you paid to benefit our mother?

MS MEMELA: The problem now Chair is that I cannot really give a direct answer there to say okay, you will see that this was bought, this paid a specialist, this went to there and this went to that, you understand? Because remember, other than this deposit and other than the
10 money for the sale of the land I have always been a breadwinner at home and I am not sure how then I am expected because during that time there was no expectation that one day I will come to the Commission and explain that okay, out of this how much then you mom has got this, how much was it sent to her and stuff.

CHAIRPERSON: But ...[intervenes]

MS MEMELA: But the bank statement, Chair, sorry, the bank statement, I doubt that it will say okay, you swiped for the tiles, you swiped for cement, you swiped for – yes.

20 **CHAIRPERSON:** But, Ms Memela, if the 2.5 million was actually for your mom because my understanding from your evidence last time was that your mom was giving you a loan.

MS MEMELA: No, a donation, not a loan.

CHAIRPERSON: Or the donation, ja.

MS MEMELA: Yes.

CHAIRPERSON: Okay, I may have I misunderstood. Okay. Now – and that she was doing so to enable you to ...[intervenes]

MS MEMELA: Buy the land.

CHAIRPERSON: To acquire property.

MS MEMELA: Yes.

CHAIRPERSON: Now if all you needed for purposes of acquiring the property was 1.5 why did you not give her the
10 balance and then she would decide what she does with it? Why did you decide to be the one to buy whatever to renovate the house, rather than give the money to her because it was her money.

MS MEMELA: It was her money, Chair, but remember also in her affidavit she did say that she was going to help me to buy – I think it is the deed of sale – to help me buy the land, right? So I do not know if the Chair was expecting me to take the money and then give it back to her [inaudible – speaking simultaneously]

20 **CHAIRPERSON:** I was thinking if she – if this was her money, 2.5, because Mr Ndzeke bought land from her.

MS MEMELA: Yes.

CHAIRPERSON: And she wanted to assist you to acquire property and you did not need the whole 2.5, you needed 1.5. I expected that she would give you 1.5 and keep the

balance and if for whatever practical reasons the 2.5 came to you. Once you had deducted the 1.5 you would then say Mom, here is the balance, I have taken the money that I need for the house.

MS MEMELA: Chair, remember there the reason why she was selling the land was to help me buy the land in Cove Ridge which was worth 2.8..

CHAIRPERSON: Which was worth?

MS MEMELA: 2.8 in Cove Ridge. And then, as I say that
10 then I changed in 2016, I decided okay, I am going to use this money to pay the deposit of 1.5 that was needed by the bank for the Bedfordview. So all I was saying to Ms Hofmeyr is that when she says okay, that 2.5 was put there it as if – I was saying it is as the whole 2.5 was put towards the – for part of the Bedfordview and it was actually that decision. Like she does not – she no longer refers to Cove Ridge but she says okay, because she has already asked me about that the last time [inaudible – speaking simultaneously]

20 **ADV HOFMEYR:** No, I said I would later come to it.

MS MEMELA: She just wants to focus on Bedfordview..

CHAIRPERSON: So ...[intervenes]

MS MEMELA: So I am saying, Chair, from the bank statement, I do not know if – I will ask my lawyer, I do not know if I should say I will then go to the bank because –

but I cannot promise that okay, it will – the bank statement will say okay, this is what you swiped for, then it will explain what did I buy, what did I do, like what is it that I buy for my mother.

CHAIRPERSON: But you are saying that the whole R2.5 million your mom gave it to you as a donation.

MS MEMELA: She was helping me with the deposit, 1.5. She helped me with the deposit.

CHAIRPERSON: Ja, was it donation or was it a loan?

10 **MS MEMELA:** It was a donation, Chair, it was not a loan.

CHAIRPERSON: The donation being 2.5 of the donation being 1.5?

MS MEMELA: No that I had a change of heart to buy the Bedfordview house it was 1.5. Then after ...[intervenes]

CHAIRPERSON: But when she gave it to you initially, was she giving you a donation of 2.5?

MS MEMELA: Yes, she was going to give me the donation of 2.5 for the Cove Ridge house – for the Cove Ridge land, yes.

20 **CHAIRPERSON:** Ja and she gave you that?

MS MEMELA: Yes, she was going to give me that but remember, it was cancelled, the Cove Ridge.

CHAIRPERSON: And then later on you decided to use only 1.5?

MS MEMELA: Only 1.5.

CHAIRPERSON: But the donation to you was the entire 1.5 million?

MS MEMELA: Ja, for Cove Ridge because it was 2.8, yes.

CHAIRPERSON: Ja.

ADV HOFMEYR: And just back to the Chair's question, at no point when you received – I made an error earlier, it was not 886 000 and it was 862 376.75 after the sale of the Bedfordview house. You did not feel that you should go back to your mother and say let me give you back
10 826 000 which I did not need to use because I ended up getting the Bedfordview house and not the Cove Ridge transaction. You did not do that.

MS MEMELA: So you are saying I did not help my mother out of this 800 ...[intervenes]

ADV HOFMEYR: No, I am saying you did go back to her and say I have only used 1.5, let me give you the remainder.

MS MEMELA: Okay, Chair, I am trying to understand, that you are expecting me to go to ...[intervenes]

20 **ADV HOFMEYR:** No, I am asking whether you did. Did you go to her and say I have only used 1.5 let me give you back the 862 000 that remains. You did not do that.

MS MEMELA: No, like if – I did not go back and say okay, let me give you the remainder, I just continuing paying for certain things that she needed like – as I always did

without 2.5 or 1.5 before.

ADV HOFMEYR: Do you recall that you invested 250 000 of it?

MS MEMELA: Yes.

ADV HOFMEYR: Yes. Do you – we will go to some of the other things you did with the money in a moment but let us go to Cove Ridge because it is an important part of this, Chair and it is really the last part that I would like to focus on for the afternoon. Because, Ms Memela, in fairness to
10 you we had evidence with Mr Ndzeke in which in the end he conceded that the sale agreement was a fraud. You heard his evidence, is that correct?

MS MEMELA: That is what he said.

ADV HOFMEYR: Yes. I am going to put it you this afternoon that the Cove Ridge transaction was also a fraud.

MS MEMELA: I do not agree.

ADV HOFMEYR: You do not agree.

MS MEMELA: Ja.

20 **ADV HOFMEYR:** Let me take you through why I put that to you.

MS MEMELA: Okay.

ADV HOFMEYR: Right. So you entered into the Cove Ridge agreement, is that correct?

MS MEMELA: Yes.

ADV HOFMEYR: When was that?

MS MEMELA: I think it was 2015.

ADV HOFMEYR: Yes.

MS MEMELA: Early 2015.

ADV HOFMEYR: April 2015.

MS MEMELA: Ja.

ADV HOFMEYR: Let us go to it. You will find it in EXHIBIT DD25A at page 370. Three seven zero, 370. Is that the Cove Ridge deed of sale?

10 **MS MEMELA:** Yes, that is the one.

ADV HOFMEYR: That is the one we looked at briefly in your evidence previously.

MS MEMELA: Yes.

ADV HOFMEYR: You were buying this property from Slipknot Investments, is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: And Ms Yake Kwinana was a director of Slipknot Investments at the time, is that correct?

MS MEMELA: Yes, I agree to that.

20 **ADV HOFMEYR:** And you signed the agreement with her, is that right?

MS MEMELA: That is right.

ADV HOFMEYR: And it appears as though this agreement was signed on the 21 April 2015. You will find that at page 373, is that right?

MS MEMELA: That is right.

ADV HOFMEYR: Do you confirm that you did sign it on that day?

MS MEMELA: Yes, let me check quickly? Yes.

ADV HOFMEYR: Yes. Your evidence previously was that you had signed this at the offices of Ms Mbanjwa, is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: Yes. Because Ms Mbanjwa at the time
10 was Ms Kwinana's lawyer, is that correct?

MS MEMELA: Yes, that is correct.

ADV HOFMEYR: And Ms Mbanjwa put this agreement together, is that correct?

MS MEMELA: Yes.

ADV HOFMEYR: Right. Now do you remember what had happened two months before that in February of 2015 in relation to property acquisitions that you were entering into?

MS MEMELA: Property acquisitions?

20 **ADV HOFMEYR:** Yes.

MS MEMELA: Do I remember...?

ADV HOFMEYR: February 2015, did you purchase any property then?

MS MEMELA: February 2015? No, I do not remember.

ADV HOFMEYR: Do you remember putting in an offer on

a property is Race View?

MS MEMELA: Race View? Where is Race View?

ADV HOFMEYR: I am not sure where Race View is, your offer to purchase just says Race View.

MS MEMELA: Okay, where is the offer to purchase.

ADV HOFMEYR: Let me ask first, do you remember putting in an offer to buy a property in Race View in February 2015?

MS MEMELA: I do not remember.

10 **ADV HOFMEYR:** You do not remember. Okay, let us go to it. You will find it in BB25C.

MS MEMELA: The page?

ADV HOFMEYR: The page is 1123. You will see it is not an excellent copy, Chair, this is the best version of the copy that the Commission has been able to obtain. The parties, you will see they are – sorry, it is letter Truda and Benjamin John – I cannot even quite read the name of the sellers. Maybe it will be clearer later. Truter, Truter. And you and your husband are the purchasers, are you not?

20 **MS MEMELA:** Ja, I see the thing, yes.

ADV HOFMEYR: You see that?

MS MEMELA: Yes.

ADV HOFMEYR: It was ...[intervenes]

CHAIRPERSON: I am sorry, where does that appear?

ADV HOFMEYR: If you see just a little bit down, it is

about the fifth line, Chair, the undersigned it says Nontsasa A Memela, Vumile(?) Memela, of 6 Jonker Crescent, Elandspark, Johannesburg, 2197. Do you see that, Chair?

CHAIRPERSON: Is that at page 1123?

ADV HOFMEYR: Yes, 1123. You will see there is first line that says To, do you have that?

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: Then there is a line that starts Of...

10 **CHAIRPERSON:** Ja.

ADV HOFMEYR: And then two lines further down it says I think it is supposed to be:

“We, the undersigned...”

And then you will see written in there is:

“Nontsasa A Memela, Vumile Memela”

Do you see that?

CHAIRPERSON: Oh, okay, ja. Yes, now I see that, yes.

MS MEMELA: They are the purchasers.

CHAIRPERSON: Before Jonker Crescent?

20 **ADV HOFMEYR:** Exactly, exactly, Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: so can you confirm at the time you were living in Jonker Crescent, Elandspark, Ms Memela.

MS MEMELA: Ja.

ADV HOFMEYR: Right and you put in this offer to

purchase a property described as Freehold Stand 6 in Township Race View. Do you see that?

MS MEMELA: Ja.

ADV HOFMEYR: And it is an offer to purchase for 1.4 million. Do you see that?

MS MEMELA: Ja.

ADV HOFMEYR: Does this job your memory.

MS MEMELA: Ja, it does remind me.

ADV HOFMEYR: Right, so you were putting in an offer to
10 purchase in February of 2015 with your husband to buy a property in Race View for 1.4 million, is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: So that is two months before you conclude the Slipknot agreement with Ms Kwinana, correct?

MS MEMELA: Ja.

ADV HOFMEYR: Right. What happened to this property?

MS MEMELA: I did not go through.

ADV HOFMEYR: Why not?

20 **MS MEMELA:** I explained, remember, that in 2015 there was difficulty in terms of the bank, they were not really approving a hundred percent or sometimes they would decline based on reasons put by them. So I kept on trying and kept on trying, yes.

ADV HOFMEYR: So you had applied for a bond for this

property, is that correct?

MS MEMELA: Yes.

ADV HOFMEYR: And it was decline by the bank, is that correct?

MS MEMELA: H'm.

ADV HOFMEYR: So they decline a bond for 1.4 million, is that correct?

MS MEMELA: Yes.

ADV HOFMEYR: Yes. And they did that the next month in
10 March of 2015. Do you recall that?

MS MEMELA: I see the letter here.

ADV HOFMEYR: Yes.

MS MEMELA: Ja.

ADV HOFMEYR: So you put an offer to purchase in February 2015, the bank will not give you a bond of 1.4 million in March 2015, correct?

MS MEMELA: Ja.

ADV HOFMEYR: And then in April of 2015 you commit yourself to 2.8 million that you are going to pay to Ms
20 Kwinana's company Slipknot.

MS MEMELA: Yes.

ADV HOFMEYR: Where were you going to get that 2.8 million?

MS MEMELA: Remember the land that was sold in Mpindweni was going to help me with.

ADV HOFMEYR: No, the land sold in Mpindweni happens later in 2015.

MS MEMELA: No, no, remember, the – my mom was going to help you, as I told you – my mom was going to help with the purchase of the land in Cove Ridge, right, which took longer to be finalised because the proclamation was not in place by then. So the 2.5 was going to go to that land and we were going to only go to the banks just for R300 000. So like that was the understanding back then.

10 **ADV HOFMEYR:** No, you were not going to go to the bank for 300 000, I think you are getting the property transactions confused. Remember, in April 2015 you agree with Ms Kwinana that you are going to pay outright R2.8 million. There was no deposit, nothing.

MS MEMELA: Yes.

ADV HOFMEYR: There was no bond either, correct?

MS MEMELA: There is no bond, yes.

ADV HOFMEYR: Yes.

MS MEMELA: Exactly.

20 **ADV HOFMEYR:** And you entered into that agreement with Ms Kwinana when the month before you did not have 1.4 million and the bank would not give you a bond for 1.4 million, is that correct?

MS MEMELA: Yes. But I knew that my mom was going to sell the land.

ADV HOFMEYR: How did you know that she was going to sell the land?

MS MEMELA: We spoke.

ADV HOFMEYR: But she did not have a purchaser at the time, did she?

MS MEMELA: She...?

ADV HOFMEYR: Did not have a purchaser.

MS MEMELA: No of course she did not but she was looking for the purchase, she was already looking.

10 **CHAIRPERSON:** Ms Memela, Ms Memela, are you saying that when the previous month you did not have 1.4 and the bank declined your bond application you made an offer for a property that would require 2.8 million about – that is about more than an extra million.

MS MEMELA: Yes.

CHAIRPERSON: More than an extra million.

ADV HOFMEYR: It is double actually.

CHAIRPERSON: H'm?

ADV HOFMEYR: It is double.

20 **CHAIRPERSON:** Ja, double. Double, simply because you were hoping that your mother would get somebody to buy the property.

MS MEMELA: She was already looking.

CHAIRPERSON: Did you make a firm offer on the basis of that hope, when there was no purchaser?

MS MEMELA: There was no purchaser yet but she was already looking for the purchaser, Chair.

CHAIRPERSON: Yes.

MS MEMELA: Yes.

CHAIRPERSON: But Ms Memela, you cannot make an offer, a serious offer on the basis of money that you do not have and you have not guarantee you are going to have.

MS MEMELA: You can make an offer, Chair, if you know that you are hoping to get ...[intervenes]

10 **CHAIRPERSON:** But did – in the offer did you say conditional upon my mother being able to sell the property?

MS MEMELA: No, no, there was no such condition in the offer and Ms Hofmeyr asked about this during my testimony and she went as far as saying there was no provision that identifies ...[intervenes]

CHAIRPERSON: Just hang on a second. Ms Mbanjwa, what is the story?

20 **MS MBANJWA:** [indistinct – off mic] and this document is – on page 371, that is the Cove Ridge thing, she says that these are going to be attached because there is no mention of a bond. There is nothing in that document saying that that was going to be cash payment(?). I am just correcting that for the

ADV HOFMEYR: Just to be clear, I did not say cash, I

said it was an outright...

CHAIRPERSON: Yes.

ADV HOFMEYR: ...offer to purchase for 2.8 million but made no reference to a deposit or a bond.

CHAIRPERSON: Ja.

ADV HOFMEYR: Thank you.

MS MBANJWA: Yes but I would beg, Chair, I know that there is a rush to finalise but what I would beg for is, if there is a document because that is just standard law, if
10 there is a written document, that document is the evidence of what it is supposed to be. There is no basis for Ms Hofmeyr or even myself to go further and say this is what this document meant. If that document does not give – does not say [inaudible – speaking simultaneously]

CHAIRPERSON: Please sit down, Ms Mbanjwa, please sit down. Let us have some progress please.

MS MEMELA: Okay.

CHAIRPERSON: Okay. Ms Hofmeyr, please continue.

ADV HOFMEYR: Thank you, Chair. You were probing the
20 circumstances in which ...[intervenes]

CHAIRPERSON: Oh, yes, yes.

ADV HOFMEYR: ...Ms Memela could commit to 2.8 million in a property transaction with Ms Kwinana when the previous month she did not have 1.4 million.

CHAIRPERSON: Yes, you were still answering that

question.

MS MEMELA: I was still answering that, Chair.

CHAIRPERSON: Ja.

MS MEMELA: I am surprised that this offer to purchase is here but others are not here just to prove as to how many times I kept on trying ...[intervenes]

CHAIRPERSON: But Ms Memela, if you make an offer to somebody selling a property to say you are going to buy the property for a certain amount and you do not indicate
10 in the agreement that that is dependent upon some other transaction, you are creating the impression to the seller that you have got the money.

MS MEMELA: No.

CHAIRPERSON: You are. Otherwise, why should he or she take your offer seriously?

MS MEMELA: Chair, I think I explained this last time but I will try and be as short as possible. That land in Cove Ridge still had certain processes to follow so I knew it was going to – I was informed that it was going to take longer
20 to be proclaimed or whatever processes that needed to be followed and I can tell you now even to this date it has not. So not putting the condition or maybe the provision that says okay, I am going to go to the bank and get the bond or maybe I am going to get the money from here to pay, it was neither here nor there because it was – we knew that

it was going to take longer ...[intervenes]

CHAIRPERSON: But you ...[intervenes]

MS MEMELA: That is why the seller actually allowed me to cancel when it took longer and commit to something else.

CHAIRPERSON: But, Ms Memela, are you saying to me it is in order for somebody to offer somebody who is selling a house – to make an offer to buy the house for an amount that they cannot afford as at that time and they are making
10 that offer on the basis that they might get the money if some other transaction happens without disclosing that that is the condition, you say that is proper?

MS MEMELA: That is proper, Chair, especially if you – like the buyer and the seller have the same understanding. And, Chair, remember, the fact that this application was declined in March, because this process was going to take longer, the proclamation and all. So remember, the bank gives you six months to actually go back and approach them for the bond. So there was that also possibly of
20 option to approach the bank maybe after six months or so. But the fact that it is not there that okay, we will get the bond, it does not mean it is not there.

CHAIRPERSON: Ms Hofmeyr, continue.

ADV HOFMEYR: Thank you, Chair. I just want to ask about this Slipknot agreement, one other factor in it. Did

you discuss it with your husband?

MS MEMELA: Can you back there?

ADV HOFMEYR: The Slipknot agreement, it is at page 371 in EXHIBIT DD25A.

MS MEMELA: 371?

ADV HOFMEYR: Yes, I think you might be in the wrong file, you need to be in DD25A, Ms Memela.

MS MEMELA: Okay, I get it. So you are asking me?

ADV HOFMEYR: I am asking you whether you discussed
10 this agreement with your husband.

MS MEMELA: I did not.

ADV HOFMEYR: You did not?

MS MEMELA: Ja.

ADV HOFMEYR: What is your marital regime?

MS MEMELA: Now, Chair, that would be a personal issue.

ADV HOFMEYR: What marital regime you are married under?

MS MEMELA: That is a personal issue now.

CHAIRPERSON: But is the position not, Ms Memela, that
20 depending on your marital regime you may not make a valid offer without the consent of the other ...[intervenes]

MS MEMELA: No, Chair, there are a lot of things that I have bought without my husband's ...[intervenes]

CHAIRPERSON: Sorry?

MS MEMELA: There are a lot of things that I have bought

without my husband's consent including [inaudible – speaking simultaneously]

ADV HOFMEYR: But the Matrimonial Property Act says you cannot buy property without the consent of your husband if you are married in or community-of-property, does not say ...[intervenes]

MS MEMELA: Also the car is my - is a property that I bought it myself.

ADV HOFMEYR: No, transactions governed by the
10 Alienation of Land Act. Ms Memela, let us just get the facts, are you married in or community-of-property with husband?

MS MEMELA: I am married according to customary law.

MS MBANJWA: Chair, my apologies, I am not aware of this provision, before this version is put to the witness I wanted to make – to get the version that says you cannot sign an offer to purchase property if you are married in or community-of-property without the other party signing.

ADV HOFMEYR: Section 15(2)(g) of the Matrimonial
20 Property Act. I will come back to it in a moment.

CHAIRPERSON: It is very logical, Ms Mbanjwa, it cannot be married to you in or community-of-property and you go and get involved in huge debts without my consent because it will affect me.

MS MBANJWA: But, Chair, I will address this as a legal

issue. The conclusion that is listed here is incorrect and the witness, it is a legal question. I will address it in re-examination. The legal ...[intervenes]

CHAIRPERSON: Continue, Ms Hofmeyr.

MS MBANJWA: Because it does not make the offer invalid.

CHAIRPERSON: You will deal with it later on, Ms Mbanjwa.

MS MBANJWA: Yes, I will deal with it, indeed, Chair.

10 **ADV HOFMEYR:** So is your evidence that you are not married in or community-of-property to your husband?

MS MEMELA: I am married in or community-of-property because all customary marriages fall under or community-of-property.

ADV HOFMEYR: And so that is why when you have to give a FICA declaration to the transferring attorneys on your Bedfordview house you indicated that you were married in or community-of-property, correct?

20 **MS MEMELA:** Yes, we were buying that house together, remember?

ADV HOFMEYR: Yes, you have to buy it together by law. That is what is unusual about the Slipknot Investment property acquisition.

MS MEMELA: That is not [inaudible – speaking simultaneously]

ADV HOFMEYR: Because you cannot purchase that property legally, Ms Memela, without your husband's consent. Do you agree?

MS MEMELA: We will argue that later.

ADV HOFMEYR: No, what is your understanding of the law, can you enter into a property transaction governed by the Alienation of Land Act without your husband's consent to whom you are married in community of property?

MS MEMELA: Chair I am not going to – what – entertain
10 that question right now.

CHAIRPERSON: Is your position ...[intervenes]

MS MEMELA: It is a question that is looking into disregarding ...[intervenes]

CHAIRPERSON: Your understanding, let us talk about your understanding, is your understanding that you can ...[intervenes]

MS MEMELA: I have bought a property with my husband.

CHAIRPERSON: Mmm, with his consent.

MS MEMELA: Exactly where we signed together.

20 **CHAIRPERSON:** Yes.

MS MEMELA: And then we signed other pages together but there are certain of that pages that was signed by me alone.

ADV HOFMEYR: But it is the – sorry Chair – the question is your understanding of the law, right, is it your

understanding of the law that you could enter into the Slipknot investment to buy a property for R2.8million without your husband's consent?

MS MEMELA: Yes, remember the contract can be amended at any time Ms Hofmeyr.

ADV HOFMEYR: Ms Memela we went through this last time.

CHAIRPERSON: Okay.

MS MBANJWA: Chair I don't want to be impertinent, I
10 have a copy of the Alienation of Land Act here. There is nothing that talks even about the community, if they are married in community of property, that's why I said can Ms Hofmeyr please, because she is saying that can you sign an offer to purchase alone if you are married in community of property.

CHAIRPERSON: You will re-examine her ...[intervenes]

MS MBANJWA: But this thing is going on record Your Worship and I wanted it to be said ...[intervenes]

CHAIRPERSON: No, Ms Mbanjwa whatever answer the
20 witness gives when you get a chance you can re-examine her to get – to give a different picture.

MS MBANJWA: May I humbly ask that the witness must not be badgered with legal questions if those legal questions are not going to be correct because she is obliged to answer and I am also searching for the section,

I cannot find this section, otherwise it is unfair cross-examination.

CHAIRPERSON: I think Ms Hofmeyr has asked whatever she wanted to ask on that ...[intervenes]

MS MBANJWA: But I need to put it on record Your Worship that this reference to the Alienation of Land Act is incorrect because there is no such provision in the Alienation of Land Act.

ADV HOFMEYR: Chair can we refer to the Alienation of
10 Land Act.

CHAIRPERSON: When you re-examine you can raise that. Yes.

MS MBANJWA: We have put it on record, we are fine, we are fine Chair, thank you.

CHAIRPERSON: Ms Hofmeyr continue.

ADV HOFMEYR: Thank you. So your evidence is you didn't discuss the Slipknot transaction with your husband is that correct?

MS MEMELA: No I didn't.

20 **ADV HOFMEYR:** But you say in your evidence that you concluded it in April of 2015 and you signed with Ms Kwinana at Ms Mbanjwa's offices, is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: And you were the purchaser under this agreement, is that right?

MS MEMELA: Yes, that's correct.

ADV HOFMEYR: Do you know what the Financial Intelligence Centre Act requires of attorneys who are appointed as the conveyancers under agreements of this nature in terms of the information they have to get from the parties to the agreement.

MS MEMELA: Please tell me.

ADV HOFMEYR: No do you know the requirements?

MS MEMELA: No, that's why I am saying tell me.

10 **ADV HOFMEYR:** You don't know.

MS MEMELA: Yes.

ADV HOFMEYR: There are certain details of the client that need to be obtained, it is information like what is your property regime, where do you live, you need to provide a proof of residence etcetera, are you aware of that at all?

MS MEMELA: Are you talking about the ...[intervenes]

ADV HOFMEYR: The FICA form, ja that is the Financial Intelligence Centre Act.

MS MEMELA: Yes, no I do.

20 **ADV HOFMEYR:** Are you aware of Ms Mbanjwa asking you for that when you concluded the sale agreement at her offices in April of 2015?

MS MEMELA: No I don't remember.

ADV HOFMEYR: Do you remember ever giving her a FICA document containing your information?

MS MEMELA: No I don't remember, but she always say the deed of sales they differ from one to the other, sometimes some lawyers, not just Ms Mbanjwa, some lawyers will ask for those, I remember it is just the forms at the end of the agreement, where people fill in the details, but there is – I am not sure if Ms Hofmeyr is trying to say if those are not provided it makes the deed of sale invalid.

ADV HOFMEYR: No I am not suggesting that at all, I am asking about your knowledge of the FICA requirement that
10 an attorney that is regulated by FICA must get information related to the client when she is the conveyancing attorney for a transaction, and you have said you don't know about those requirements.

MS MEMELA: Yes, and you told me so I have just asked if it makes it invalid and you said no that is not what you are suggesting.

ADV HOFMEYR: No, so you don't recall giving Ms Mbanjwa a FICA client take-on sheet in relation to the transactions.

20 **MS MEMELA:** No I don't.

ADV HOFMEYR: Let me take you to the one that Ms Mbanjwa provided to the Commission which contains your information. You will find it in Exhibit DD25C.

MS MEMELA: DD?

MS MBANJWA: Chair just a point of correction, I work as

an attorney in an office with ...[intervenes]

CHAIRPERSON: Ms Mbanjwa you can correct during re-examination.

MS MBANJWA: Thank you Chair.

CHAIRPERSON: I want us to make progress, you keep on standing up all the time, you are hampering progress.

MS MEMELA: Give me the page?

ADV HOFMEYR: Right, it is towards the end, you will find it starting at page 1129.

10 **CHAIRPERSON:** Is that under 25A?

ADV HOFMEYR: 25C Chair apologies, we have to go back to C.

CHAIRPERSON: And what is the page?

ADV HOFMEYR: 1129, it is right towards the end, 1129.

MS MEMELA: Which bundle Ms Hofmeyr?

ADV HOFMEYR: 25C. And so what you see at page 1129 Ms Memela is the response from Ms Mbanjwa to a subpoena or a summons under the auspices of the commission to which she was responding, do you see that?

20 **MS MEMELA:** I see that.

ADV HOFMEYR: And she indicates what documents are attached.

MS MEMELA: Okay.

ADV HOFMEYR: There is the deed of sales which is the Slipknot Investment agreement that we have been looking

at and then at page 1135 there's the client take-on sheet in relation to this, do you see that?

MS MEMELA: Ja.

ADV HOFMEYR: Is that not a document that you recall?

MS MEMELA: Which page are we going to?

ADV HOFMEYR: 1135.

MS MEMELA: 1135. Okay my details are here.

ADV HOFMEYR: Yes, you said you didn't recall giving Ms Mbanjwa a client take-on form, do you now remember it?

10 **MS MEMELA:** But Chair saying I do not recall does not mean you're saying – you're denying it, I just said I do not recall.

CHAIRPERSON: No, no Ms Hofmeyr knows that, she does know that.

MS MEMELA: Okay.

ADV HOFMEYR: Do you now remember?

MS MEMELA: Now I remember.

ADV HOFMEYR: Did you fill it out, is this your handwriting?

20 **MS MEMELA:** No this is not my handwriting.

ADV HOFMEYR: And at the bottom there, there seems to be a signature, is that your signature?

MS MEMELA: No.

ADV HOFMEYR: So have you seen this document before?

MS MEMELA: Chair I wouldn't remember because it is

something that happened in 2015, because now I can see also my ID that was applicable at that time which is – it was the ID.

ADV HOFMEYR: So you don't have a recollection of this?

MS MEMELA: Yes, but these are my details.

ADV HOFMEYR: Right.

MS MEMELA: Yes.

ADV HOFMEYR: Right, and what is interesting about what you just said is that this was something that happened in
10 2015, you see that's also what I would have thought, because you entered into the Slipknot agreement in April of 2015 didn't you?

MS MEMELA: Yes it was signed in 2015.

ADV HOFMEYR: Yes.

MS MEMELA: Ja, but I am just saying the ID that I was using in 2015/2016 I think I started having only a card in 2017 or something, ja.

ADV HOFMEYR: You see the FICA requirements are that the conveyancing attorney who is identified in the property
20 agreement must get this information from the client, so they do what is called client take-on sheets, do you see that at page 1135, yes. This client take-on sheet was concluded in 2016 though, not in 2015 when you entered into the Slipknot agreement, was it?

MS MEMELA: Ja, but is there something in that FICA that

you are quoting that says okay the personal client take-o sheet should be signed at the same date?

ADV HOFMEYR: Well it is when you take on the client, hence the name.

MS MEMELA: But what if the client was Ms Jackie Kwinana, she has always been her client and then I was ...[intervenes]

ADV HOFMEYR: No you are the purchaser.

MS MEMELA: Ja.

10 **ADV HOFMEYR:** So you need to get the information from both parties.

MS MEMELA: Ja, but I am just asking again does the FICA Act that you are referring to say it should be signed i the same day.

ADV HOFMEYR: When you take on the client.

MS MEMELA: I understand that.

ADV HOFMEYR: And if you were taken on as a client because you concluded the Slipknot agreement in April of 2015 you would have expected there to be a client take on
20 sheet i 2015 wouldn't you?

MS MEMELA: Chair I don't know if I would remember properly, but I know that a certain, I don't if it was the Bedfordview one or maybe other offer to purchase where you would be called in maybe later on when they wanted to do their filing and stuff and say okay you know what we did

not fill in this, so that's why you hear me asking Ms Hofmeyr if there is any legislation that says it should be done in the same day. So sometimes it is done later, afterwards, because what is important is the deed of sale that has been entered into.

ADV HOFMEYR: You see what's relevant about the date when it was done is it is done the day after JM Aviation paid the R2.5million to Ms Mbanjwa, it wasn't done back in April 2015 when you concluded the agreement with Ms
10 Kwinana according to your evidence. Do you accept that?

MS MEMELA: You are saying it was done after?

ADV HOFMEYR: JM Aviation paid the R2.5million to Ms Mbanjwa.

MS MEMELA: I don't know when was it.

ADV HOFMEYR: It was paid on the 5th of May 2016 and this is dated the 6th of May 2016, do you see that?

MS MEMELA: I see that, okay.

ADV HOFMEYR: Yes, so you don't dispute what is contained on this document.

20 **MS MEMELA:** Yes.

ADV HOFMEYR: That it was only prepared on the 6th of May 2016 in circumstances where you had entered into the Slipknot Investment in April of 2015, correct?

MS MEMELA: Correct.

ADV HOFMEYR: Thank you. So let's just talk about what

happens, you conclude the agreement in April of 2015 with Ms Kwinana without talking to your husband about it, correct?

MS MEMELA: Chair I am not sure if really the Commission now is trying to cause a dispute between myself and my husband because I am really trying to understand.

ADV HOFMEYR: I am seeking not to create marital strife, I am just wanting to get the chronology right.

10 **MS MEMELA:** Chair, Chair not in bad manner or anything like that I am not talking for other people but I am just saying certain things you don't discuss, you just say okay we are going to do that, I am going to invest in that and whatever. I even mentioned the last time that investment has always been my thing, especially in property. When I bought – when we bought a home in Fourways in 2007 we also bought flats in Bloemfontein for the students and now I am going back to what Ms Hofmeyr is saying it's okay you can't buy this when you just bought that so my worry now
20 is that ...[intervenes]

CHAIRPERSON: Ja, we are going to get ...[intervenes]

MS MEMELA: ...I will get a call or my husband I will find my husband not talking to me because of these questions and then maybe I will be handed divorce papers because of this kind of question and that is what my understanding of

the Commission were ...[intervenes]

CHAIRPERSON: But the problem is that if ...[intervenes]

MS MEMELA: ...and now you are cause dispute with my family.

CHAIRPERSON: Ms Memela?

MS MEMELA: Ja?

CHAIRPERSON: The problem is that we are going to waste time if you don't answer a straightforward question, if it is relevant it has got to be answered.

10 **ADV HOFMEYR:** You see I want to put it to you I said that I was going to deal with the Slipknot investment and put to you that it was not a genuine agreement and what I am going through are the various indicators that I will put to you show that it was not a genuine agreement, and that is why I raised the question of the marital regime under which you were married and your husband's role because the other agreements that we have seen Ms Memela where you purchased property ...[intervenes]

MS MEMELA: All of them.

20 **ADV HOFMEYR:** The ones we have seen yes.

MS MEMELA: Oh.

ADV HOFMEYR: Yes, Raceview, Bedfordview etcetera.

MS MEMELA: Ja.

ADV HOFMEYR: It is you and Mr Memela who jointly purchased the property, right. This stands out because it

is the one where he doesn't join you in purchasing the property, do you accept that?

MS MEMELA: But did the purchase go through?

ADV HOFMEYR: No it is about whether you can validly make the offer, he didn't join you?

MS MEMELA: Okay we talk about ...[intervenes]

ADV HOFMEYR: Yes, in making that offer did he?

MS MEMELA: His signature is not there ja.

ADV HOFMEYR: Yes, and the second feature is that you
10 didn't fill out a client take-on form at the time that you entered into that agreement, despite being at Ms Mbanjwa's offices. The only time that was filled out for you was a whole year later only after you got the JM Aviation money, is that correct?

MS MEMELA: Chair that is what I just explained that many law firms, in fact many conveyancers are not a conveyancer but sometimes they will call you later on to take your details and fill in that form so I even asked Ms Hofmeyr if there is a regulation somewhere where it says
20 okay this must be signed or filled in at the same day otherwise it makes it invalid and she said that is not what she is suggesting.

ADV HOFMEYR: No it was slightly different. You were asking me whether the fact that you didn't fill it out invalidated the agreement, and I said that is not the case.

MS MEMELA: Okay.

ADV HOFMEYR: But FICA requires the person governed by FICA to get that information from you before a transaction takes place and we will argue in due course Chair that the conclusion of that sale agreement created those obligations for the conveyancing attorney, who was Ms Mbanjwa and that it is relevant that no client take-on sheet was completed then, it was only completed the day after the JM Aviation money came into Ms Mbanjwa's trust
10 account.

But let's move on then to ...[intervenes]

MS MBANJWA: With your permission can I make just one clarification.

CHAIRPERSON: Sorry, you want to make what?

MS MBANJWA: Just one comment.

CHAIRPERSON: Ja, but why are you not reserving that comment for your re-examination?

MS MBANJWA: No it is because Ms Hofmeyr is arguing on a wrong understanding of ...[indistinct – not speaking
20 into mic]

CHAIRPERSON: No you can deal with that later, please sit Ms Mbanjwa.

ADV HOFMEYR: Okay so we have moved from April of 2015, right when you conclude the Slipknot agreement with Ms Kwinana and I want to now move to February of 2016,

okay. Because in February 2016 you owe Ms Kwinana R2.8million in accordance with the Slipknot Investments agreement, is that correct?

MS MEMELA: I don't – okay I corrected this in February, I don't owe because it was not transferred to me yet, we were still waiting for the proclamation.

ADV HOFMEYR: Where does the Slipknot agreement talk about a proclamation?

MS MEMELA: It does not talk about that but I mean that's
10 what was happening and I believe that if you need those documentation to be provided to the Commission they could be found.

ADV HOFMEYR: What proclamation was it?

MS MEMELA: You may explain Ms Mbanjwa.

ADV HOFMEYR: You are the one giving evidence, please tell us what proclamation was required?

MS MEMELA: I said like I mean there are processes Chair to put the land into ...[intervenes]

MS MBANJWA: ...[Indistinct]

20 **ADV HOFMEYR:** Chair if I could just request that Ms Memela not seek an answer from her legal representative, I would like Ms Memela to give us the evidence about the proclamation. What proclamation was required?

MS MEMELA: Chair the problem is that Ms Mbanjwa here is a conveyancer, remember I was just a buyer, not a

conveyancer so she would understand those details.

CHAIRPERSON: Ja, but you cannot ask for her assistance while you are giving evidence.

MS MEMELA: Okay.

CHAIRPERSON: You must give evidence on what you know.

ADV HOFMEYR: What did you understand the proclamation to be?

MS MEMELA: Okay the proclamation would be where the
10 land is now measured or sized or whatever the process that is done to make sure that the land is now ready to be handed over to – for sale or whatever.

ADV HOFMEYR: No, it was perfectly described in the Slipknot agreement, it was portion 11 of farm A 925, Cove Ridge, East London, so what else had to happen? Measuring 8.5 hectares, what else had to happen?

MS MEMELA: Okay Chair let me not answer something that I am not sure of, then my lawyer is going to cover that and will explain better.

20 **ADV HOFMEYR:** No your lawyer unfortunately Ms Memela cannot give evidence in this Commission. Only you can. You have told us that this agreement was subject to some proclamation that was going to happen.

MS MEMELA: Yes.

ADV HOFMEYR: But you are unable to tell us what that

proclamation is, is that correct?

MS MEMELA: But remember the proclamation part is something that is an explanation that should come from the seller. What was explained to me was that that was what is going to happen and that is why when I approached her with regards to okay, I think now I want to buy from ...[indistinct], she was okay because she said this thing is taking longer than we expected. Ms Kwinana and her husband they are developers, estate developers for quite
10 some time, so I trusted her ...[intervenes]

CHAIRPERSON: Now you are talking about zoning and rezoning.

MS MEMELA: I think it is rezoning or something ja.

ADV HOFMEYR: But you see Ms Memela the reason you raised the proclamation is because I said to you in February 2016 you owed Ms Kwinana R2.8million and you don't because there was some proclamation that had to happen, is that correct?

MS MEMELA: Yes, and I am still saying it now that you
20 cannot say you owe somebody if the plan has not been transferred to you yet.

ADV HOFMEYR: No you pay and then it is transferred Ms Memela.

MS MEMELA: Yes I know but remember you pay and while you are paying they are – you pay and then the

money gets into the account it does not get transferred to the seller until all the documentation and all the procedure has been put in place.

CHAIRPERSON: No Ms Memela.

ADV HOFMEYR: Ja?

CHAIRPERSON: It doesn't seem to make sense to say you don't owe the seller until the property is transferred because you need to pay the purchase price before the property is transferred, you see, so when your answer is
10 you did not owe her because the property had not been transferred that doesn't make sense, you understand.

MS MEMELA: Yes it does not make sense for you but our understanding and arrangement makes sense for us. I did not owe her.

CHAIRPERSON: Was there an arrangement between the two of you that you would only pay ...[intervenes]

MS MEMELA: Yes that is it.

CHAIRPERSON: That you would only pay ...[intervenes]

MS MEMELA: Once the rezoning ...[intervenes]

20 **CHAIRPERSON:** After the property has been transferred?

MS MEMELA: No, after ...[intervenes]

CHAIRPERSON: The property will be transferred first?

MS MEMELA: No we will only pay once that process that I am talking about has been finalised, which still has not been finalised.

CHAIRPERSON: The rezoning?

MS MEMELA: Yes Chair.

ADV HOFMEYR: Well I think it's a proclamation, I don't
Ms Memela in fairness knows what the process was.

MS MEMELA: Yes.

ADV HOFMEYR: You don't know?

MS MEMELA: Ja.

ADV HOFMEYR: Right, but in February 2018 – sorry
2016, you nonetheless entered into the offer to purchase
10 on the Bedfordview house, correct?

MS MEMELA: Correct.

ADV HOFMEYR: Which committed you to paying
R3.8million, correct?

MS MEMELA: Correct.

ADV HOFMEYR: Right, so in February 2016 you had
liabilities for R2.8million and R3.8million which totalled
R6.6million, is that correct?

MS MEMELA: No, the liability was only applicable for the
Bedfordview house.

20 **ADV HOFMEYR:** Right, so because you don't understand
the Slipknot investment creating any liability for you is that
correct?

MS MEMELA: Because when discussed with the seller it
was understood that because it is taking longer then I can
actually move onto another option, so there were no double

liability and Chair I have already addressed this in Feb when I was here for testimony.

CHAIRPERSON: Ja well if clarification is sought there will be questions Ms Memela.

MS MEMELA: Okay.

ADV HOFMEYR: Right, so that's February 2016, did you speak to Ms Kwinana then about getting out of it when you had concluded the Bedfordview contract.

MS MEMELA: Yes I think we discussed.

10 **ADV HOFMEYR:** Then why did you only cancel Cove Ridge later in May.

MS MEMELA: Why did I only cancel later in May.

ADV HOFMEYR: Mmm.

MS MEMELA: Because I think that was the amount that was going to – as deposit towards Bedfordview happened in May.

ADV HOFMEYR: No you committed yourself to R3.8million in February of 2016. Your evidence has just been that because of that commitment you went back to Ms
20 Kwinana, correct?

MS MEMELA: No, 3.8 Chair the bank did not approve the whole 3.8, it just stated the full amount of the house at that time, then the bank insisted on the deposit, so committing to the full 3.8 I am not sure I follow your question.

ADV HOFMEYR: Ms Memela when you make an offer to

purchase you accept that you commit to pay the purchase price.

MS MEMELA: Yes.

ADV HOFMEYR: Right, that's what you did in February of 2016, correct.

MS MEMELA: Ja, through the bond.

ADV HOFMEYR: And at the same time you had a liability of 2.8 under the Slipknot agreement, correct?

MS MEMELA: Yes, in terms of that agreement.

10 **ADV HOFMEYR:** Yes, and you spoke to Ms Kwinana at the time you said.

MS MEMELA: Correct yes.

ADV HOFMEYR: But then why do you want till May to cancel the agreement with Ms Kwinana?

MS MEMELA: Because I wanted to make sure I guess that I will have the deposit that is needed by the bank for Bedfordview.

ADV HOFMEYR: Yes, and where did that money come from?

20 **MS MEMELA:** The what?

ADV HOFMEYR: For the deposit?

MS MEMELA: Okay that is the one that Mr Ndzeke bought the land from ...[indistinct] R1.5 ja.

ADV HOFMEYR: Total R2.5 of which 1.5 was used.

MS MEMELA: 1.5 went to the deposit ja.

ADV HOFMEYR: Yes, you see that is the timing that is important Ms Memela for what I am going to put to you today, right, because it is only upon receipt of the money from Ms – JM Aviation that you then two days later go and cancel the agreement with Ms Kwinana, correct?

MS MEMELA: Correct.

ADV HOFMEYR: And what happens in the chronology is the R2.5million comes into Ms Mbanjwa's trust account and then the next day she obtains that client information sheet
10 from you, we saw that that's the 6th of May 2016 and then the next day you go and cancel the agreement with Ms Kwinana is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: Right, let us just look at that cancellation if we may, it is in DD25A at page 397.

MS MEMELA: What page?

ADV HOFMEYR: 397.

MS MEMELA: DD25A?

ADV HOFMEYR: Yes.

20 **CHAIRPERSON:** Ms Hofmeyr?

ADV HOFMEYR: Yes.

CHAIRPERSON: Let's talk all of us about the way forward. We are at five past five, I would have liked that we try and finish today but I will have challenges beyond six, so let's talk a little bit about that. How much more

time do you think you need before you ...[intervenes]

ADV HOFMEYR: I have one more issue on the Slipknot investment.

CHAIRPERSON: Yes.

AD HOFMEYR: Then I will put certain matters to Ms Memela and then I want to deal on one aspect on the GP use.

CHAIRPERSON: Ja, maybe 15 minutes?

ADV HOFMEYR: 20.

10 **CHAIRPERSON:** Maybe 20. Ms Mbanjwa I would have liked us to continue beyond six o'clock in order to try and finish but I am going to – I am not going to be able to go beyond six o'clock. Should we work on the basis that once Ms Hofmeyr has finished we just arrange for you and Ms Memela to come back for re-examination on another day or shall we use whatever time is left after Ms Hofmeyr has finished and then if – and then she will come back, Ms Memela will come back some other time anyway.

MS MBANJWA: Actually, Chair there will be no time, Ms
20 Hofmeyr will not ...[indistinct]

CHAIRPERSON: Sorry?

MS MBANJWA: There won't be time, Ms Hofmeyr won't finish because – so I am not worried, but then the second point which I want to address the fact that I now have to bring that application for the two hours to be extended and

I will give the reasons in the application. I can quickly enumerate them.

CHAIRPERSON: No, no don't give them now.

MS MBANJWA: Yes, so I will have and I can just say what also concerns me is the fact that, and this I strongly note, is the fact that the law is not read properly and legal questions which are incorrect are put to the witness so what we are going to do, one of the things we have to do, why we need that, is to just deal with the law, purely with
10 the correct law and then also deal of course with the re-examination, so definitely the two hours won't be enough.

CHAIRPERSON: Okay, alright so I think we – I think what you are saying is for today you accept that you want to do re-examination another – we will have to look at another time. Okay, I think Ms Hofmeyr continue, but try and finish within your 20 minutes.

ADV HOFMEYR: Of course, thank you Chair, I really am indebted.

CHAIRPERSON: Ja, okay.

20 **MS HOFMEYR:** Right we were at 397 of DD25A, that is the cancellation letter, is that correct? Ms Memela if you will just turn on your microphone, it has gone off.

MS MEMELA: Okay, that is correct.

ADV HOFMEYR: And it reflects the date of the 7th of May 2016, is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: Is that the date on which you agreed with Ms Kwinana to cancel the Slipknot sale?

MS MEMELA: I think Chair we agreed verbally, then in writing it was put later on.

ADV HOFMEYR: Right and there seems to be something written by Ms Kwinana at the bottom there, is that correct?

MS MEMELA: Yes that is Ms Kwinana's handwriting.

ADV HOFMEYR: And what does it say?

10 **MS MEMELA:** Dear Mlindi, please action as per the above letter.

ADV HOFMEYR: And who is that Mlindi referring to?

MS MEMELA: Her lawyer.

ADV HOFMEYR: Ms Mbanjwa?

MS MEMELA: Yes.

ADV HOFMEYR: So is this the instruction that was then given to Ms Mbanjwa in relation to the ...[intervenes]

MS MEMELA: I think so yes.

ADV HOFMEYR: Do you think so or do you know, just so
20 that I can be clear.

MS MEMELA: Okay yes that was the instruction.

ADV HOFMEYR: Right and was it given on the 7th of May as it is indicated at the bottom there.

MS MEMELA: It is written 7 May but I am saying in terms of agreement Chair it would have been done verbally but in

writing later on.

CHAIRPERSON: I thought that was 2 May.

ADV HOFMEYR: I think it's 07 with a line Chair because of the date, is that correct Ms Memela.

MS MEMELA: It looks – remember – ja I said I am not a handwriting expert.

ADV HOFMEYR: Yes no that is true.

MS MEMELA: But it looks like 07.

ADV HOFMEYR: Okay and that is when the notification
10 went to Ms Mbanjwa is that correct, from Ms Kwinana?

MS MEMELA: Yes.

ADV HOFMEYR: Yes, now on the client take on sheet that was completed the day before which we looked at previously in Exhibit DD25C, page 1135, you will see right at the bottom there's another detail indicated there which is cancelled transfer, do you see that?

MS MEMELA: Cancelled transfer, okay yes.

ADV HOFMEYR: Yes, and that was completed the day before on the 6th of May.

20 **MS MEMELA:** Yes.

ADV HOFMEYR: You see that?

MS MEMELA: Yes.

ADV HOFMEYR: How could Ms Mbanjwa have known about the cancellation if she had not yet received the notification that came the next day.

MS MEMELA: Of course they talk, like I said to Chair that the cancellation happened through a verbal agreement but the returned one happened later, so they used to communicate.

ADV HOFMEYR: So it was anticipating getting the written ...[intervenes]

MS MEMELA: Sorry?

ADV HOFMEYR: It anticipated getting the written confirmation, is that right?

10 **MS MEMELA:** Because the cancellation was already discussed.

ADV HOFMEYR: Right. So I just want to put together then Ms Memela what in summary I offered to you for an opportunity to comment about the slipknot investment agreement right? You see the agreement was concluded without the involvement of your husband whereas the law requires him to be involved in order to commit you to a property purchase of this nature. Your evidence is you were not aware of that at the time, is that correct?

20 **MS MEMELA:** No I said I was not – I am not aware because of the law that you are quoting.

ADV HOFMEYR: Right.

MS MEMELA: But I said also there are certain lots of things that I have signed without my husband.

ADV HOFMEYR: Yes.

MS MEMELA: Yes.

ADV HOFMEYR: Property purchases?

MS MEMELA: Ja property purchases.

ADV HOFMEYR: Right. We might want to see those in due course.

MS MEMELA: I will make them ..

ADV HOFMEYR: Governed by the Alienation of Land Act.

MS MEMELA: Ja I might look for them ja.

ADV HOFMEYR: And then his written consent was...

10 **ADV MBANJWA:** My apologies but can Ms Hofmeyr because I am convinced Ms Hofmeyr does not understand the law on alienation on speaker. Can she please not put this question to...

CHAIRPERSON: Wait...

ADV MBANJWA: After I have explained the law.

CHAIRPERSON: We will...

ADV MBANJWA: Because that is my difficulty now.

CHAIRPERSON: The witness has given an answer and let us move on.

20 **ADV MBANJWA:** Yes but – but Chair that she is ...

CHAIRPERSON: You will clarify whatever you want to clarify in re-examination.

ADV MBANJWA: No Chair she cannot – Chair she cannot respond to any correct legal questions.

CHAIRPERSON: She has responded.

ADV MBANJWA: No but Chair she cannot ...

CHAIRPERSON: You will clarify it later when you re-examine.

ADV MBANJWA: Chair – Chair honestly Chair I beg thee. A witness cannot be asked an incorrect legal question and ask to respond.

CHAIRPERSON: Ms Mbanjwa I am saying...

ADV MBANJWA: Please.

CHAIRPERSON: If she has given a wrong answer when you
10 re-examine you will raise all of that.

ADV MBANJWA: Chair I cannot

CHAIRPERSON: And it will be clarified.

ADV MBANJWA: Chair these proceedings are recorded they are on television.

CHAIRPERSON: Yes.

ADV MBANJWA: What is happening here is Ms Hofmeyr does not understand the FICA Act and then what she does she said because of what she sees here she thinks there has been no compliance with the FICA Act. She is incorrect.

20 **CHAIRPERSON:** Ms Mbanjwa. Please.

ADV MBANJWA: As she puts that to a witness.

CHAIRPERSON: Please sit down.

ADV MBANJWA: Thank you Chair.

CHAIRPERSON: Please sit down.

ADV MBANJWA: We have recorded ...

CHAIRPERSON: Let us try and finish.

ADV HOFMEYR: And you committed Ms Memela to paying R2.8 million to Slipknot Investments the month after you were not able to raise a bond for R1.4 million with the bank, is that correct?

MS MEMELA: I understand that yes.

ADV HOFMEYR: And I understand your evidence to be you thought at some point your mother was going to be able to sell land which would enable you to purchase the property,
10 correct?

MS MEMELA: Yes and also I explained also that remember the fact that the bank had declined the previous month because this was going to take longer. Remember if the bank declines you can still go and approach them after six months.

ADV HOFMEYR: Yes but that would have been a bond from the bank, correct?

MS MEMELA: The bond yes.

ADV HOFMEYR: And your agreement did not make any
20 reference to a bond, correct?

MS MEMELA: It did not make reference to cash either.

ADV HOFMEYR: No it is a commitment to pay R2.8 million.

MS MEMELA: Did it?

ADV HOFMEYR: That means without securing some other source of funds.

MS MEMELA: It did not say that. We have put that to Ms Hofmeyr Chair that the agreement did not say – did not put to cash nor bond.

ADV HOFMEYR: So what does that mean?

MS MEMELA: It is just like...

CHAIRPERSON: So what did it mean?

MS MEMELA: It could have been either way. For instance like I could have gone to the bank and get the bond after six months. Because remember now she is focussing on the
10 fact that the bank declined March and I am saying we could have approached the bank after six months where they actually relook again at your profile.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: You did not have the funds available to you in April of 2015, did you?

MS MEMELA: No I did have cash. .

ADV HOFMEYR: And you nonetheless entered into an agreement where you did not complete any client take on form for Ms Mbanjwa the conveyancing attorney at the time,
20 is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: The only time that was concluded was after the money came in from JM Aviation, is that correct?

MS MEMELA: That is correct and I explained to you Chair that sometimes does not have to be done at the same time

with the agreement.

ADV HOFMEYR: Ms Memela we will argue in due course.

MS MEMELA: Oh okay.

ADV HOFMEYR: That the series of those facts make it very improbable that this was a genuine agreement that was entered into between you and Slipknot Investments in April of 2015. Do you want to respond to that?

MS MEMELA: Remember Ms Hofmeyr Chair that is her version.

10 **CHAIRPERSON:** Sorry?

MS MEMELA: Chair that is her version and we will give our own version.

CHAIRPERSON: Okay.

ADV HOFMEYR: But I am offering you an opportunity to respond to it now. That what is what I must do because I am going to argue that in due course I must have your comment on it.

MS MEMELA: You saying it is improbable.

ADV HOFMEYR: That it is a genuine agreement.

20 **MS MEMELA:** That is your opinion.

ADV HOFMEYR: Because of all of those features. Do you accept that?

MS MEMELA: Okay repeat that you said?

ADV HOFMEYR: I said it is improbable that it was a genuine agreement that you entered into in April of 2015?

MS MEMELA: It was a genuine agreement.

ADV HOFMEYR: That is your answer?

MS MEMELA: Yes.

ADV HOFMEYR: Thank you. It was not something that you devised later when the commission started to investigate this matter so that you could justify the R2.5 million that you had received from JM Aviation?

MS MEMELA: Why – why would I have to justify to the commission about the R2.5?

10 **ADV HOFMEYR:** Because otherwise it is a corrupt payment that you received from a supplier to SAA Technical.

MS MEMELA: The payment for what?

ADV HOFMEYR: The R2.5 million.

MS MEMELA: The payment for what?

ADV HOFMEYR: I beg your pardon?

MS MEMELA: You said that I received the payment from the supplier and what was the payment for as you are putting it to me?

20 **ADV HOFMEYR:** You used that as I understand your evidence to purchase your Bedfordview property and then to spend R826 000.00 after that.

MS MEMELA: No but – I do not know Chair if I understand her question correctly. Because she said the payment was – payment from the supplier paying me. So I am asking payment for what because she has been making conclusions

that was payment for...

CHAIRPERSON: She is talking about the R2.5million.

MS MEMELA: Yes for the land but...

CHAIRPERSON: Yes.

MS MEMELA: But I am asking her now payment for what because she has been making conclusions that it was payment – their payment for benefits. So I thought that she was making that statement again.

ADV HOFMEYR: Yes.

10 **CHAIRPERSON:** But just repeat your question.

CHAIRPERSON: Okay.

ADV HOFMEYR: Apologies. So it is R2.5 million.

MS MEMELA: Ja.

ADV HOFMEYR: That you benefitted from that was paid by JM Aviation. Do you accept that?

MS MEMELA: My – to the land of my mother.

ADV HOFMEYR: Yes and you asked why would you need to explain it and I put it to you that you need to explain it because you were the Head of Procurement at SAA Technical
20 at the time and to receive a payment of R2.5 million from a supplier to SAA Technical may involve corruption.

MS MEMELA: How?

ADV HOFMEYR: Ms Memela.

MS MEMELA: Okay, okay Chair.

CHAIRPERSON: How – how can you ask how?

MS MEMELA: Oh she is the one who is asking me. Okay Chair. Remember Ms Hofmeyr keeps on using you were Head of Procurement and I thought okay you know what as soon as I get a chance I need to give clarity to this as much as I had given clarity in February. The way Ms Hofmeyr is putting this – Nontsasa Head of Procurement it is as if I had that kind of power to walk in – let me make an example now like where I met Mr Ndzeku in the workshop. To walk in the workshop and say, hey guys I am Head of Procurement
10 therefore everybody gets a tender. You get a tender you see like Oprah Winfrey...

CHAIRPERSON: Well no she means it – she means it you are Head of Procurement.

MS MEMELA: No.

CHAIRPERSON: Procurement you have certain powers.

MS MEMELA: No.

CHAIRPERSON: You are overseeing procurement.

MS MEMELA: Chair that is why I explained also in February that there are no powers that are vested onto being HOD
20 Procurement. Like I said because like there are structures that are followed when the tender is ready. So I – there is no influence coming from the Head of Procurement that says – that is why I am saying being a Head of Procurement does not mean you are Head - like I mean dishing out tenders. If that was the case then it means I would use that power to

dish out tenders to everybody including my family that is standard. There is a structure that is followed in each and every SOE's including SAAT that okay I even explained to you Chair the role of the CFST Close Functional Sourcing Team that they are the ones with power to evaluate, to adjudicate, to score the suppliers. I do not sit on that evaluation. So to say...

CHAIRPERSON: Are there people who sit in these structures you talking about people who – who fall under
10 you?

MS MEMELA: Sorry?

CHAIRPERSON: Do the people who sit in those structures – are those people – do those people fall under you?

MS MEMELA: Okay the – the DFST teacher is consists of people from different departments being the experts that have to talk about certain component or whatever that you guys are going to go out on a tender. So they sit there and come up with a specification, come up with a tender documentation, come up – and then they do all that
20 independently from me. And then at a later stage when they have done the short listing and scored the highest scoring bidder they come then to recommend to EXCO through me. Remember Chair you even said okay like then you are – actually used as I said – that is what I said. Yes.

ADV HOFMEYR: But you were the person responsible for

deciding to sell the GPU's to JM Aviation at R3.2 million were you not?

MS MEMELA: I was not the person who was responsible for – to decide to sell the GPU's

ADV HOFMEYR: No at R3.2 million was my question Chair.

MS MEMELA: Even at R3.2 million I was not a person who was – Chair the determination of the price when it comes to disposal process at SAAT and it is in the SAM policy. I remember I actually explained this to Ms Hofmeyr and get
10 him during our interview. That is how it works. It does not fall under Nontsasa to determine the price. I even read Chair if you still remember but I am going to still repeat that during the re-examination. I even read to you a proposal that was made by Jules Aire the owner of JM Aviation International made to the acting CEO of SAAT before even the board decided. So when Ms Hofmeyr puts it like that you decided that the GPU's must be sold it sounds like that was a decision to be made by me. A decision to sell the GPU's firstly it was made at SAA and I have been consistent about
20 this because there is what – evidence that proves this and – yes.

CHAIRPERSON: Okay.

MS MEMELA: And then – ja.

ADV HOFMEYR: Chair just so I am not misunderstood. I am not putting it to Ms Memela that she took the decision to sell

the GPU's. So Ms Memela we must not be misunderstood. What I put to you is you were the person who decided to sell them at the price of R3.2 million and I want to explain to you why I put that to you. Right.

MS MEMELA: Yes you can.

CHAIRPERSON: One second.

ADV HOFMEYR: Because in your evidence...

CHAIRPERSON: One second Ms Mbanjwa.

ADV MBANJWA: Thank you Chair. Chair there is here
10 before court – the commission this is a document that has
been furnished to us by the commission and this document is
the affidavit of Julian Aires. It states expressly who decided
the price. What puzzles us is that throughout Ms Hofmeyr is
ignoring this document. It is one of the documents which
specifically asked to be given to us in order to prepare for
this re-examination. If I can give you a page reference of
that it is DD32...

CHAIRPERSON: Ms Hofmeyr – Ms Mbanjwa even that when
you re-examine you can get it clarified. Ms Hofmeyr.

20 **ADV HOFMEYR:** Thank you Chair.

CHAIRPERSON: Make a note of all these things that you
might want to be clarified and then you can clarify them
during re-examination.

ADV MBANJWA: The difficulty Chair is that this is not a
clarification. If I may be bold to say it is suppression of

evidence.

MS MEMELA: Yes.

ADV MBANJWA: It is there. This Julian Aires said exactly what is ...

CHAIRPERSON: Sit down.

ADV MBANJWA: And it gets then put to this witness that it is her indeed. That is the reason why I just could not contain myself.

CHAIRPERSON: The witness will say what she knows. If
10 she knows that to be true she will say so; if she knows that to be different, she will say no it is not like that. If she does not know she will say she does not know. When you re-examine you will revisit the issue.

ADV HOFMEYR: Your evidence in – sorry Ms Memela.

MS MEMELA: Ja you – Ms Hofmeyr you said I am the person who decided to sell the GPU's for R3.4 right?

ADV HOFMEYR: Yes.

MS MEMELA: Decided.

ADV HOFMEYR: Yes.

20 **MS MEMELA:** And Chair I am explaining this that...

CHAIRPERSON: That is the price. Ja.

MS MEMELA: That price determination that as you and I understand because I do not know if Ms Hofmeyr has worked for a corporate sector before. She is just – she has just been practicing but I will try and explain as simply as I can

and hoping the public will understand this because this thing of GPU's keep on coming back to me. Now there is a difference Chair between the disposal process versus a procurement process. The procurement process you procure and then through that evaluation team they go out and make sure that people are competing in terms of price. The disposal I even wanted to say you know I think maybe one day I must make it – make an example to the Chair that you – I will make an example of the office. I do not know if you
10 have been – I do not think you have been to the office for the card.

CHAIRPERSON: Please do not make an example with the ...

MS MEMELA: But yes but I am talking about disposal. I am trying to explain disposal Chair. The disposal – the buyer will be the one who makes the proposal offer to purchase to something that has been disposed of.

CHAIRPERSON: But Ms Memela...

MS MEMELA: Right and then I read...

MS MEMELA: Did you decide the price or not that is the
20 question.

MS MEMELA: Who decide the price or not?

CHAIRPERSON: Did you decide the price or not?

MS MEMELA: I did not decide the price Chair.

CHAIRPERSON: Who decided the price?

MS MEMELA: The price – the price definitely was decided

by the person whom Jules Aire made a proposal to.

CHAIRPERSON: And who is that person?

MS MEMELA: They said it was the acting CEO of SAAT at that time Mr Asimalola Phiri.

CHAIRPERSON: Yes you see that is all you needed to say in response to the questions.

ADV HOFMEYR: Thank you. So that is why we went to Mr Phiri and Mr Phiri says he did not approve the price. You know that because you have seen his affidavit correct?

10 **MS MEMELA:** I have seen the affidavit and because I know Chair that this commission's team have got the evidence that actually proves how much Asim has changed whatever that he was responsible for.

CHAIRPERSON: Ja no let us continue Ms...

MS MEMELA: And – yes.

CHAIRPERSON: Ja. You have answered the question.

ADV HOFMEYR: So Mr Phiri's affidavit sets out that he did not have a discussion with you about the price. Remember we have got to go back to the 21 June 2016 because it is on
20 the 21 June 2016 that you have the meeting with Ms Sekulu and Mr Aires do you recall that?

MS MEMELA: Okay let us go back. Let us go back Ms – Chair remember I told you about the proposal that...

CHAIRPERSON: I am sorry Ms Hofmeyr just repeat your question because...

ADV HOFMEYR: Yes I want to go to...

CHAIRPERSON: Because I want to...

ADV HOFMEYR: Sure. There is a meeting that Ms Memela had on the 21 June 2106 with Ms Sekulu and Mr Aires. At that meeting they discussed the sale price of the GPU's. Do you accept that Ms Memela?

MS MEMELA: Chair I was asked by the acting CEO to go ask the people that sent the proposal to him how did they reach the price that they put in their proposal.

10 **ADV HOFMEYR:** But I just want to know if you had a meeting?

CHAIRPERSON: Ms Memela just respond to the question. Do you remember?

MS MEMELA: Yes I had the meeting and I explained also Chair in February that I had that meeting and it was a professional meeting with the JM people after getting that instruction from Asim and there was ...

CHAIRPERSON: Hang on with the explanation.

MS MEMELA: Okay.

20 **CHAIRPERSON:** The long and short is you remember what you talked about?

MS MEMELA: I remember the – yes.

CHAIRPERSON: Yes.

MS MEMELA: There is even a – what the...

ADV HOFMEYR: An email.

MS MEMELA: Meeting invite yes.

ADV HOFMEYR: There is a meeting invite that went to Mr Makaleng who said he did not attend the meeting with you and Mr Vosloo who said he did not attend the meeting with you. Your evidence in February is that they are lying they were with you.

MS MEMELA: They did, they did.

ADV HOFMEYR: And then you said you accepted that you could not on your own decide on that price.

10 **MS MEMELA:** No ways.

ADV HOFMEYR: You had to speak to Mr Phiri about it, correct?

MS MEMELA: Chair the problem now is that Ms Hofmeyr is only focussing on that meeting.

CHAIRPERSON: But she is asking the particular question.

CHAIRPERSON: Yes there is no way that I would have decided on the pricing because it was not under my department. And I am – since she is referring to Mr Assin – Mr Asimalola Phiri's affidavit the recent one that was only
20 received in September 2020 where he says he did not...

CHAIRPERSON: Hang on, hang on Ms Memela.

MS MEMELA: Okay.

CHAIRPERSON: Just repeat your question Ms Hofmeyr.

ADV HOFMEYR: Your evidence in February was that you accepted you needed to get Mr Phiri's agreement to the

price. Do you remember that?

MS MEMELA: I needed to get his agreement?

ADV HOFMEYR: Yes on the price because you accepted you did not have the authority to agree with JM Aviation to sell it at R3.5.

MS MEMELA: No, no.

ADV HOFMEYR: You had to get the acting CEO's agreement that it could be sold at that price. Do you remember giving that evidence?

10 **MS MEMELA:** No Chair I mean – I think these are the – one of the – some of the things that I am supposed to come back and clarify which is the reason why I applied for a re-examination. Assin gave me instruction after he received the proposal from Jules Aire. Right that okay this is what their proposing for the GPU's and asked me to arrange a meeting and sit with these people and then [00:18:26] was going to be there as well being the owner of the GPU's. I invited Leon who was the senior manager Logistics and Inventory that time but Leon could not make it. The only person that I
20 know that was not going to make was Leon because he was not in. Then Stan Vosloo because he is reporting to Leon is the one that came in because he is under sales and materials as well. So...

ADV HOFMEYR: We have traversed that previously. They said on affidavit they were not there you dispute that. That

is not what I am interested in.

MS MEMELA: I dispute that.

ADV HOFMEYR: Ms Memela. What I am interested in is your previous testimony which is that you accepted you had to get Ms Phiri's agreement on the sale price. Do you remember giving that evidence?

MS MEMELA: When you say agreement do you mean a written agreement?

ADV HOFMEYR: No just he had to agree with you because
10 your evidence was you had a discussion with him. Do you remember that?

MS MEMELA: Yes I had a discussion because I had to give feedback after he instructed me to go and sit with the people and get and understand how did they reach the price.

ADV HOFMEYR: Yes and the...

CHAIRPERSON: Ms Memela.

MS MEMELA: Yes.

CHAIRPERSON: Ms Memela did you need Mr Phiri's agreement on the price or did you not need it?

20 **MS MEMELA:** Chair Mr Phiri asked me to sit with the people and ask because remember they put a certain price there.

CHAIRPERSON: Oh Ms Memela did you need Mr Phiri's agreement on the price or you could do without his agreement on what the price should be?

MS MEMELA: It was not under my - what delegation of

authority Chair to agree on the price.

CHAIRPERSON: Do you remember giving evidence previously.

MS MEMELA: Yes.

CHAIRPERSON: That you needed Mr Phiri's agreement or do you not remember?

MS MEMELA: Chair I said Mr Phiri even signed the invoice.

CHAIRPERSON: No, no, no I am not talking about the invoice. I am saying do you remember giving evidence to
10 the effect that you needed Mr Phiri's agreement or you do not remember giving such agreement?

MS MEMELA: No I do not remember Chair. I think I explained...

CHAIRPERSON: Okay.

MS MEMELA: But to be specifically exact and say okay I needed an agreement and stuff because what I did not understand is that a person would give you an instruction and then say okay go and [00:20:34] these people. These – this is the proposal that they gave me. Here is the board
20 resolution. Ask them how did they reach this amount to – for their proposal.

CHAIRPERSON: Ja.

MS MEMELA: And then I go back to him tell him that they came back to me and say okay this is how they reached the amount.

CHAIRPERSON: No but – that is fine Ms Memela that is not about...

MS MEMELA: And there is evidence which...

CHAIRPERSON: The price. Okay.

ADV HOFMEYR: Do you remember giving evidence that you had a discussion with Mr Phiri and you and he agreed on the sale price?

MS MEMELA: Yes.

ADV HOFMEYR: You do remember that evidence?

10 **MS MEMELA:** I did give him a feedback because remember whatever he gives you...

ADV HOFMEYR: No your evidence was that you discussed it with him and you and he agreed on the price.

MS MEMELA: Yes I did. Exactly remember when you give back the feedback is that not – does that not mean that you are discussing with him?

ADV HOFMEYR: No the important point is that you had a discussion with him.

MS MEMELA: Yes.

20 **ADV HOFMEYR:** And you agreed with him about the price.

MS MEMELA: I did. I did.

ADV HOFMEYR: Correct?

MS MEMELA: Correctly.

ADV HOFMEYR: And that happened somewhere between your meeting on the 21 July and your communication to JM

Aviation that the reviewed price had been approved. Do you recall that?

MS MEMELA: The – when you say the communication you talking about the letter of our writing?

ADV HOFMEYR: Correct well it was the letter that confirmed the price.

MS MEMELA: Yes.

ADV HOFMEYR: Yes and that happened on the 22 July. Do you recall that?

10 **MS MEMELA:** It is not the letter that confirms the price. It is the letter that confirms the approval by the board.

ADV HOFMEYR: Of the price. Because remember the approval of the board had already been given.

MS MEMELA: Approval of the proposal by the board.

ADV HOFMEYR: We will look at it in a moment. That happened between the 21st and the 22nd is that correct?

CHAIRPERSON: Ms Mbanjwa I will let – I will let you know when I want to hear from – let Ms Hofmeyr finish.

ADV MBANJWA: Chair [inaudible]. We have an affidavit of
20 Julian Aires it has stated exactly how the price was determined.

CHAIRPERSON: Ms Mbanjwa please sit down. Ms Hofmeyr.

ADV HOFMEYR: Okay. Thank you. So between the meeting on the 21st June...

CHAIRPERSON: You know Ms Mbanjwa. Ms Mbanjwa I

have had many lawyers coming to the commission when their clients are giving evidence. I do not – I have never had somebody who objects so frequently. It hampers progress. Continue Ms Hofmeyr.

ADV HOFMEYR: So you had the meeting on the 21 June and then the letter confirming the review priced was accepted was the 22nd June. Do you remember that?

ADV HOFMEYR: 22nd June the next day.

MS MEMELA: Okay is it written that?

10 **ADV HOFMEYR:** Yes.

MS MEMELA: Hm.

ADV HOFMEYR: Do you accept that for present purposes or do you want me to take you to it?

MS MEMELA: You can take me there because I do not want to – for you to [talking over one another].

ADV HOFMEYR: DD25A at page 354.

MS MEMELA: At page?

ADV HOFMEYR: 354.

MS MEMELA: Ja.

20 **ADV HOFMEYR:** Do you see it? Is that the letter that we are discussing?

MS MEMELA: That is the letter yes.

ADV HOFMEYR: And what is its date?

MS MEMELA: Must I – the date is the 22 June 2016.

ADV HOFMEYR: That is why I said somewhere between

your meeting on the 21 June with Ms Sekulu and Mr Aires and the sending of this letter on the 22 June you had to have had a discussion with Mr Phiri.

MS MEMELA: Of course.

ADV HOFMEYR: At which you agreed, is that correct?

MS MEMELA: Of course yes.

ADV HOFMEYR: Yes. His affidavit said he did not have that discussion with you. You have seen that, correct?

MS MEMELA: Did he send the proof other than saying he
10 was on EXCO?

ADV HOFMEYR: That is not my question. My question is have you seen his affidavit where he denies having had that discussion with you?

MS MEMELA: Is he denying that but I have evidence to prove.

ADV HOFMEYR: You have evidence to prove?

MS MEMELA: Yes.

ADV HOFMEYR: That he did have the discussion with you?

MS MEMELA: No I have ...

20 **ADV HOFMEYR:** Please tell us.

MS MEMELA: Evidence to prove that he is actually the price determiner and he actually is the one who is responsible for that.

ADV HOFMEYR: That is not the question Ms Memela. It is not about who is responsible in terms of the regulations. It

is about what happened between the 21st and the 22nd June.

MS MEMELA: Okay.

ADV HOFMEYR: You say you had a discussion and he says you did not, correct?

MS MEMELA: I said I had a discussion.

ADV HOFMEYR: Yes and his version is you did not. Have you seen that version?

MS MEMELA: My version is I did.

ADV HOFMEYR: Yes.

10 **MS MEMELA**: Ja.

ADV HOFMEYR: He explains why you could not have had a discussion. He says on the 21 June he was in an EXCO meeting the entire day and he includes the

MS MEMELA: 21st.

ADV HOFMEYR: 21st sorry did I say 22nd I apologise.

MS MEMELA: No you said the 21st yes.

ADV HOFMEYR: On the 21st he says I was in an EXCO meeting the entire day. He attaches the minutes they are lengthy and voluminous. Are you saying despite the fact that
20 he was in that EXCO meeting the entire day you had a discussion with him on the 21st?

MS MEMELA: I had a discussion with him on the 21st?

ADV HOFMEYR: Yes.

MS MEMELA: Yes I mean attending a meeting Ms Hofmeyr you do understand whether it takes the whole day or not

there are breaks and a person – and in SAAT and SAA just opposite like the [00:25:17] it is just opposite each other.

ADV HOFMEYR: So do you have a specific memory...

MS MEMELA: So the fact that he was – the fact that he was attending that meeting does not mean I did not discuss it with him..

ADV HOFMEYR: So did you discuss it with him on the 21st or might you have done it on the 22nd?

MS MEMELA: I do not remember but I am saying I gave him
10 back the feedback from the instruction because the instruction was I received this proposal before I went to the board which was the reason Chair he went to the board – Asim proposing to the board to get – to get the GPU's sold. And then he said okay these are the – this is a proposal by Jules Aire that was tabled please arrange a meeting with these people and Chila being the owner and also whoever is there from the sales which was Leon at that time but Leon did not make it. So go and ask how did they reach the amount that they had put in the proposal. So that is exactly
20 what we asked in the meeting. And then we gave – I gave the feedback to him. So that is why I am trying to show Ms Hofmeyr that when she says discussing the discussion happened when I was giving him feedback.

ADV HOFMEYR: But the problem is Mr Phiri denies having had that discussion with you. So I need to offer you an

opportunity to explain to the Chair why your version rather than his should be accepted right. Mr Phiri says you did not have the discussion on the 21st because he was in an EXCO meeting the whole day. Right. I accept that it might have happened on the 22nd because he does not say anything about the 22nd. Do you have a clear recollection as to whether you were speaking to him on the 21st or the 22nd?

MS MEMELA: Yes remember that was the question that you put to me that did I give – what – did I discuss this with him.

10 So for me I am not talking about which date and stuff I just saw that date there. But I am just explaining Chair that the fact that he was at a – attending EXCO does not necessarily mean that he will...

CHAIRPERSON: You say you are not sure on which date...

MS MEMELA: I am not sure which date that he was...

CHAIRPERSON: It could be...

MS MEMELA: Yes it could be...

CHAIRPERSON: The day of the meeting or the day before?

MS MEMELA: Exactly but what I know is that the feedback
20 was given to him based on instruction that he gave to me.

ADV HOFMEYR: But you had to get his agreement right?

MS MEMELA: Sorry?

ADV HOFMEYR: Not just feedback you had to get his agreement?

MS MEMELA: Of course you give feedback because

remember he is the person who motivated to the board that these things must be sold.

ADV HOFMEYR: I want to explain to you why I suggest to you it could not have happened on the 22nd June.

MS MEMELA: Okay.

ADV HOFMEYR: Okay. And that is because when you sent that letter of confirming the review price to Ms Sikulu you sent it very early in the morning.

MS MEMELA: Okay.

10 **ADV HOFMEYR:** So early that I would suggest you would not have had a conversation with Mr Phiri before that.

MS MEMELA: When you say early what time was it?

ADV HOFMEYR: Do you accept that? 6:43 in the morning.

MS MEMELA: 5:43 in the morning and then you saying I did not give him instruction between 21 and 22?

ADV HOFMEYR: No I am saying it is unlikely that you would have done it on the morning of the 22nd June before 5:43 am, do you accept that?

MS MEMELA: Okay that is why I explained about the EXCO
20 issue that the fact that he was attending EXCO does not mean that

ADV HOFMEYR: So you accept you did not do it on the 22nd?

MS MEMELA: Ja.

ADV HOFMEYR: You would have had to have done it on the

23rd – 21st somewhere between the meeting and the end of the day, correct?

MS MEMELA: That could have happened.

ADV HOFMEYR: No but I am trying to work out the probabilities. You have accepted that you would not have had a conversation with him before 5:43 am in the morning?

MS MEMELA: Of course it is too early in the morning.

ADV HOFMEYR: Right.

MS MEMELA: Ja.

10 **ADV HOFMEYR**: So it had to happen on the 21st and the 21st was the day that he was in the EXCO meeting.

MS MEMELA: Yes.

ADV HOFMEYR: But your evidence is you spoke to him at some point.

MS MEMELA: Yes.

ADV HOFMEYR: Is that correct?

MS MEMELA: That is correct.

ADV HOFMEYR: Thank you. Chair that was to clarify the role that Ms Memela played in the review price.

20 **MS MEMELA**: Yes.

ADV HOFMEYR: And its approval. We do not have any further questions at this point.

CHAIRPERSON: Yes. Okay. No that is fine. We are at twenty to six. We will then have to adjourn and then another date will be determined when the re-examination can

happen. It may be that we might have to do it on an evening – in an evening session which might start at four or five going into the evening because it is difficult to find days that are not already occupied for the rest of – of the balance of the year. Ms Memela you want to say something before your attorney says something?

MS MEMELA: Oh, in case maybe you wanted something ...[intervenes]

CHAIRPERSON: Ja, Ms Mbanjwa.

10 **MS MBANJWA:** No, Chair. Maybe, she should speak first because I was going to read out ...[intervenes]

CHAIRPERSON: Okay. She says, speak first.

MS MEMELA: Alright, Chair. The affidavit of miss... Mr Asimalola appearing. I have been asking for it since ...[intervenes]

CHAIRPERSON: Whose affidavit?

MS MEMELA: The then acting CEO of SAAD(?). Mr Asimalola appearing. I have been asking for it as far back as 2020, January. 2020, February. After... during... yes,
20 during that time ...[intervenes]

CHAIRPERSON: H'm?

MS MEMELA: Of my testimony and nothing was coming forward and I kept on asking because I had a lot of documents Chair that was written by Mr Asimalola Phiri where he was stating exactly what happened towards the

sale of CPU's.

CHAIRPERSON: H'm.

MS MEMELA: And I was only given this... his affidavit which out of the blue now it changes. He is denying everything, contradictory to the document that I have sent to the Commission. I said okay this is I am going to use during my re-examination.

So since Ms Hofmeyr is relying on Mr Asim's affidavit where he actually denies certain things. My understanding
10 was that I should have been given a Rule 3.2 where... as much as I have asked for it because remember the rule of the Commission is that if somebody says something that implicates you, you should be given a Rule 3.2.

So that you are able to actually address those implication by that other person and put evidence. So that by the time myself and the attorney come here and then set the record straight.

We have actually already submitted my own affidavit contradicting exactly what Mr Asimalola has written. So you
20 see now for Ms Hofmeyr to rely on it now, yet I was not given that Rule 3.2 to respond.

So that like when she asks me all these questions, she is able to say: Okay you are saying here as... Now I am only expected to answer according to what Asim had said versus what I have said. And that is giving me difficult...

I am not sure then Chair, how are you going to handle that? Am I still going to be given Rule 3.2 where I will be responding to Mr Asimalola appearing, where I will prove with evidence that he was the determiner of the price for the CPU's.

He was the person that the delegation of authority to dispose of those CPU's, fall under his shoulder and all those kinds of...

And then I can then make an application to cross-
10 examine him because I have so much to prove that he lied deliberately. I am not sure because knowing Asim.

Asim is a person that I have worked with since I joined SAAT even before I went to procurement. He is the person with a backbone who stands for the truth.

But after reading that, the lies that are there and stuff, they left me asking myself: Okay is this the same Asim that I knew? Is this the same person that wrote this ...[intervenes]

CHAIRPERSON: Okay ...[intervenes]

MS MEMELA: ...document that I can prove that
20 ...[intervenes]

CHAIRPERSON: Okay let us ...[intervenes]

MS MEMELA: I want to prove ...[intervenes]

CHAIRPERSON: I think I... hang on, hang on.

MS MEMELA: Yes.

CHAIRPERSON: Ms Hofmeyr, any... what do you say about

that issue of the affidavit?

ADV HOFMEYR: Well, the first thing I just want to get clear is Ms Memela says that she provided the Commission with some document that she wanted to use in her re-examination relates to ...[intervenes]

MS MEMELA: Yes.

ADV HOFMEYR: I have no knowledge of that. What document is that?

MS MEMELA: You can then ask Ms Tshabalala. Is it
10 ...[indistinct] the secretary? Yes.

ADV HOFMEYR: What document was that?

MS MEMELA: That document was sent in March 2020 after my re-examination.

MS MBANJWA: If I may correct, Chair? It was sent on the 3rd of April.

MS MEMELA: Oh, April? Yes.

MS MBANJWA: It was never addressed to Ms Hofmeyr. It was addressed to the secretariat.

MS MEMELA: To... yes.

20 **MS MEMELA:** Ms Ratsikana(?).

MS MEMELA: On, Ratsikana.

ADV HOFMEYR: I cannot say I have any knowledge of it as I stand here.

MS MEMELA: Yes.

ADV HOFMEYR: So I would want to see that, certainly. I

have not seen it to my recollection before today. So that is why it came as a surprise to me.

MS MEMELA: Okay.

CHAIRPERSON: Ja.

ADV HOFMEYR: Can you just tell me what the document was?

MS MEMELA: The document Chair... because remember, this, as I have said, this ...[indistinct] a few things ...[intervenes]

10 **CHAIRPERSON:** Oh.

MS MBANJWA: Sorry, Chair. Because Chair wants to leave. We have a copy of the document. We will furnish ...[intervenes]

MS MEMELA: No. Ja.

MS MBANJWA: We had actually made a bundle.

CHAIRPERSON: Oh, is that so?

MS MBANJWA: Because we were ready to re-examine.

CHAIRPERSON: Okay, okay.

ADV HOFMEYR: That really has not come to my attention.

20 **CHAIRPERSON:** Yes.

ADV HOFMEYR: So I would like to see it. The reason why I am asking you about it now. It is relevant to process, right?

CHAIRPERSON: Yes.

MS MEMELA: Ja.

ADV HOFMEYR: It is very important if Ms Mamela has documents that she believes we need to see, we must see them.

CHAIRPERSON: H'm, h'm.

ADV HOFMEYR: Certainly.

CHAIRPERSON: H'm.

MS MEMELA: Ja.

ADV HOFMEYR: It is why I made the point earlier that what I am concerned about is a situation where we move to re-
10 examination and the documents that we should have considered beforehand and we have not had an opportunity to do so.

CHAIRPERSON: H'm, h'm.

ADV HOFMEYR: So we would certainly want to see them. We would also have no difficulty with an affidavit from Ms Mamela, setting out her version. That is why she was invited after Mr Ndzeke's evidence, to give an affidavit. She requested Mr Phiri's affidavit.

MS MEMELA: Ja.

20 **ADV HOFMEYR:** She was given it.

MS MEMELA: H'm.

ADV HOFMEYR: There was no affidavit from her forthcoming until today. So what we would very much appreciate if any documents that Ms Memela wants to place before the Commission be placed before us.

Any affidavit that she would like to put before the Commission, setting out her version, she should provide.

But the problem is, we should get that before her re-examination starts because there might be matters that we need to traverse. That would be our proposal Chair.

CHAIRPERSON: Yes. But is there an affidavit that... Ms Memela, you say you have been waiting for and you have not received it?

MS MEMELA: Yes. This is the similar affidavit Chair.

10 **CHAIRPERSON:** And you have not received it?

MS MEMELA: I have only received it on the 17th of September 2020.

CHAIRPERSON: Oh, you have got it now?

MS MEMELA: Exactly. So that is why I am saying. Since Ms Hofmeyr is relying on it and it appears he is saying something ...[intervenes]

CHAIRPERSON: Ja.

MS MEMELA: ...implicating him and whatever. So I am saying, is it allowed now? Because my understanding is that
20 I should have been given 3.2 Rule so that I am able to respond to that. And then I can also apply for cross-examination.

CHAIRPERSON: Yes.

MS MEMELA: Because I feel the public deserves to know the truth.

CHAIRPERSON: Yes.

MS MEMELA: Because ...[indistinct] sits here. She keeps on getting asked all these questions ...[intervenes]

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

MS MEMELA: Yes. So I really need that.

CHAIRPERSON: Ja, that could be arranged.

MS MEMELA: Ja.

CHAIRPERSON: Ms Mbanjwa and Ms Hofmeyr will talk about that. That will be arranged and discussed.

10 **MS MEMELA:** Ja.

CHAIRPERSON: It should not be a problem.

ADV HOFMEYR: Certainly.

CHAIRPERSON: Okay alright. So you have raised what you wanted to raise and the way forward about that is sorted.

MS MEMELA: You have not answered me Chair. The cross-examination, am I going to be given a chance to reply?

CHAIRPERSON: Well, you are paying that lawyer. Remember? She must work for these fees. [laughing] She
20 must give you advice. Ms Mbanjwa, you wanted to say something before we adjourn?

MS MBANJWA: Yes, actually Chair. Actually, Chair I am so happy that you are saying I am paid. Therefore, I must give legal advice because then Chair you will accept that I object all... not because I am ...[intervenes]

CHAIRPERSON: [laughing]

MS MBANJWA: Bu because I am paid. There is a late update. He said when he was asked by a judge he said: Judge, I am paid to courageous.

CHAIRPERSON: [laughing]

MS MBANJWA: So I am indebted to Chair. Thank you Chair for being patient with us.

CHAIRPERSON: Yes.

MS MBANJWA: But what we are going to say Chair. I was
10 going to suggest that, instead of us requesting the Rule 3.2, I can see the time constraints and we really appreciate the fact that Chair is prepared to meet us on our equal.

We really appreciate it and we are grateful for that. So what we are going to do. We are going to bring an application.

That is a formal application under oath where we are going to ask to cross-examine this person, this Asim. And then the other thing which we are going to ask for Chair because that is going to take time.

20 Because without maybe casting suspicion(?) on the investigating team and Ms Hofmeyr. But we have looked at the manner in which the evidence that was entered.

We feel that it is presented in a negative light. So consequently, what we are going to do. There is a certain affidavit which are already within the Commission which we

are going to ask the Commission to read into the record.

But it is very important that they get read into the record. And then when the Chair makes his whole conclusion, then you could be having all that.

And then lastly Chair. There is the issue of this legal... we should just believe that the evidence leader, as he has said, does not understand some of the legal provisions.

So we will just then have to do an explanation of what each of those legal provisions are and then we will submit it.

10 Thank you, Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: Chair, we are speaking from the legal team's perspective. Anything that Ms Memela wishes to place before us, we would welcome.

CHAIRPERSON: H'm, h'm.

ADV HOFMEYR: Her version or whatever she wants to say about Mr Phiri, application to cross-examine. If she wants to do a document in which she sets out where she thinks we got the law wrong, we invite that. We would want to
20 consider it. Thank you.

CHAIRPERSON: H'm.

MS MEMELA: Can I be...?

CHAIRPERSON: Sorry?

MS MEMELA: Can I add just one thing?

CHAIRPERSON: What is that?

MS MEMELA: You see, it is not... it is just one... something that I read out of ...[intervenes]

CHAIRPERSON: Ja, what is that?

MS MEMELA: ...out of many books that I read. I do not know if you are aware of the 48 Rules of Law? And I came across exactly...

Because you see, when these things keep on being put to you, you end of up asking yourself [speaking vernacular] something is at play here.

10 I am trying to understand. And as I was reading that book, I saw Rule 26. Chair, when you get the chance and when you are at home, sitting in a chair, read that ...[intervenes]

CHAIRPERSON: Ms Memela ...[intervenes]

MS MEMELA: And then if you... I am finish Chair.

CHAIRPERSON: Please, stop there. Please, stop there. [laughing]

MS MEMELA: I want... because I am trying to understand like people are appear clean and they are pushing everything
20 ...[indistinct]

CHAIRPERSON: Please, please, please. Stop there.

MS MEMELA: H'n-‘n.

CHAIRPERSON: We are going to adjourn. Another date will be determined. In the meantime, certain things might happen including the filing of an application ...[intervenes]

MS MEMELA: Yes, Chair.

CHAIRPERSON: ...and the exchange of documents. But another date will be communicated as soon as possible. Thank you to everybody. We are going to adjourn. The Commission will sit tomorrow to hear the evidence of Mr Frolick, a member of parliament. We adjourn.

ADV HOFMEYR: Thank you, Chair.

INQUIRY ADJOURNS TO 2 OCTOBER 2020