

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

**28 OCTOBER 2020**

**DAY 293**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 28 OCTOBER 2020**

**CHAIRPERSON:** Good morning Mr Kennedy, good morning everybody. Thank you. You may be seated Mr Mlambo. Yes are you ready?

**ADV KENNEDY SC:** Yes thank you Chair. If we may proceed with Mr Mlambo's evidence that he started yesterday?

**CHAIRPERSON:** Yes do you not need assistance Mr Mlambo there? I think he needs assistance. You trying to  
10 get used to how to handle it. Okay, okay. Okay alright. The oath you took yesterday will continue to apply today okay? Alright. Thank you.

**ADV KENNEDY SC:** Mr Mlambo you gave evidence yesterday about a process in which you were asked to give approval as the – as the Group Executive Supply Chain Management for a particular transaction relating to 217 or  
183 items of equipment – the armoured hulls for the Hoefyster contract and we got to the point where you had explained your correspondence with officials and – and  
20 then you escalated it when you were not satisfied with the process by sending emails to Mr Saloojee and Mr Wessels and others to express your reasons why you were not prepared to approve the transaction pointing out the serious irregularities.

**MR MLAMBO:** That is correct Chair.

**ADV KENNEDY SC:** Now you – we touched yesterday on your points that you did not receive any response from Mr Saloojee or anybody else that you had sent the – the email to. Mr Saloojee has been asked to give further evidence before the commission to deal with issues that have been raised by other witnesses against him.

And I just want to put to you the version that Mr Saloojee intends to give before the commission which as I understand it is the – is to the effect that he received your  
10 email; he noted it; he did not respond to it directly to you instead he discussed it with his colleagues including Mr Wessels and he understood that there was a solution found that resolved these issues and that is why he did not respond to you.

Do you have any comment on that?

**MR MLAMBO:** I do not believe that the decision that was taken was actually a solution to the problem. My view was that the business was supposed to go to LMT. I could not think of any sensible reason or sound reason as to why the  
20 business had to be given to VR Laser.

Because that was going to have an adverse impact on our financials as a group and my view was that as one of the Group Executives I had the responsibility to contribute towards the success or profitability of Denel.

And taking business away from Denel did not

contribute to that objective.

**ADV KENNEDY SC:** Now you started just before we adjourned yesterday.

**CHAIRPERSON:** I am sorry. I am sorry Mr Kennedy. Do you happen to know by any chance what it is that Mr Saloojee says was the solution that he thought was the solution to your concerns? Do you know what it is?

**MR MLAMBO:** I am assuming that..

**CHAIRPERSON:** Or you do not know?

10 **MR MLAMBO:** The solution would be in his view that I had actually found common grounds with the CEO of Denel Land Systems and my other colleagues at Corporate Office. And to me that does not constitute a sound solution.

**CHAIRPERSON:** Yes, no but my question is whether when he says he engaged I think with certain people within Denel and he thought a solution had been found to your concerns do you know what he is talking about or do you not know but you – you speculate?

20 **MR MLAMBO:** I actually do not know.

**CHAIRPERSON:** You actually do not know.

**MR MLAMBO:** Yes I am speculating.

**CHAIRPERSON:** Yes.

**MR MLAMBO:** Ja.

**CHAIRPERSON:** Okay alright. Are you surprised that any

solution to concerns raised by you would have been found without involving you?

**MR MLAMBO**: No I should actually have been confronted with alternatives. I believe in robust basis there are challenges.

**CHAIRPERSON**: Yes.

**MR MLAMBO**: And if I am convinced that they are putting on the table sound solutions then I would actually retract my position and then accept what I think is in the interest  
10 of the business.

**CHAIRPERSON**: Hm. Is there nobody whoever came to you within Denel or DLS to say – apart from what Mr Burger wrote to you – is there anybody who came and said and we actually have found a solution and this is the solution to your concerns?

**MR MLAMBO**: No-one ever came to me Chair.

**CHAIRPERSON**: No-one ever did that. Okay alright. Mr Kennedy.

**ADV KENNEDY SC**: Thank you Chair. Mr Mlambo you  
20 mentioned as you were finishing your evidence yesterday afternoon the position paper and then I said to you that let us leave that until the morning because that is going to take a little time. Could you please turn in that bundle to page 793?

**MR MLAMBO**: Yes I have found 793.

**ADV KENNEDY SC:** Is this the – is this the position paper that you were referring to yesterday?

**MR MLAMBO:** Yes indeed it is.

**ADV KENNEDY SC:** And may I ask you please to turn to page 795 it bears your name and title Denis Mlambo Supply Chain Executive Manager. Is that your signature?

**MR MLAMBO:** Yes it is Chair my signature.

**ADV KENNEDY SC:** And are those your initials next to where the person has – has amended the date?

10 **MR MLAMBO:** No it is not. It is Mr Wessels initials.

**ADV KENNEDY SC:** Mr Wessels. So it is also signed apart from yourself by Mr Jan Wessels the Group COO and Mr Mhlontlo the Group Financial Director?

**MR MLAMBO:** That is correct.

**ADV KENNEDY SC:** Please tell the Chair how it came about that this position paper was prepared?

**MR MLAMBO:** Mr Wessels actually approached me based on the feedback I had given to the Executive team of DLS and my colleagues at Corporate Office. And he believed  
20 that we could actually find an amicable solution to the problem. And we discussed the issue...

**CHAIRPERSON:** To which problem?

**MR MLAMBO:** To the problem of awarding the business to VR Laser.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** May I just ask? I am sorry Chair if I might – sorry for interrupting you. Was that the – was that arising from the email that we looked at yesterday addressed to them and Mr Saloojee and others saying this is the problem with awarding the contract to VR Laser? Was it in response to that that Mr Wessels came to you and said there may be an amicable solution to this issue?

**MR MLAMBO:** Yes it was a response to that email and others before that very email. And we had a meeting the  
10 three us. Mr Mhlontlo, Mr Wessels and myself we looked at the merits of the decision and also spoke about the flaws in the process. And in the end they concurred with me that yes it was definitely in the interest of Denel to give the business to LMT which is what this position paper is actually saying. But it is also looking beyond just that opportunity that we talking about right now.

**ADV KENNEDY SC:** If I can take you – I am not going to go through all the reasons for your recommendation that that LMT be given this contract but if I can start at page  
20 793 you see halfway down a heading Evaluation.

**MR MLAMBO:** Huh-uh.

**ADV KENNEDY SC:** And just read to the Chair please the first two lines.

**CHAIRPERSON:** I am sorry what page is it?

**MR MLAMBO:** 793 Chair.



**CHAIRPERSON:** Oh okay.

**MR MLAMBO:** The bullet – first two bullet lines.

**ADV KENNEDY SC:** Just immediately after the word evaluation.

**MR MLAMBO:** Oh.

10                   “LMT is a Denel subsidiary. 51% owned by  
Denel and 30% owned by Pamodzi a fully  
black owned company. Denel has  
management control that also means  
management accountability for LMT.”

**ADV KENNEDY SC:** Now you mentioned yesterday that one of the concerns was a group policy to try and supply in-house where you had a subsidiary or a division that could do – could do the work. Was that what informed the point here in your position paper?

20                   **MR MLAMBO:** It certainly was the reasons and in fact the mere fact that we were persuaded as I pointed out that I was a member of the DLS board. We were persuaded to acquire LMT – because it was a strategic company especially insofar as the execution of the Hoefyster contract I was concerned. So it just did not make sense to me that all of sudden we must deviate from that position.

**ADV KENNEDY SC:** Now you then express:

                  “It is our opinion that:”

And then we have the bullet points or the arrows if I can

just refer to them either by reading out the sentence or summarising it? You refer first in the first point to LMT did submit a financial competitive quote. You have dealt with the comparison of prices yesterday, is that right?

**MR MLAMBO**: That is correct.

**ADV KENNEDY SC**: And then your second point is that LMT has already manufactured some prototype hulls – does have a nominal experience base line from where to work and improve. You refer to them having real  
10 operational capacity and managerial challenges at LMT as identified by DLS management. What did that relate to without going into detail just at a broad level?

**MR MLAMBO**: Ja there were some management issues but they did not all emanate from LMT. Someone actually did an assessment of the problems and they identified that the problems were in both DLS and LMT. There were some lapses in governance which I believed we could address as Denel with that management accountability. And we worked on that and I saw some improvement because I was  
20 in constant contact with the CEO of LMT Doctor Stephan Nel.

**ADV KENNEDY SC**: And then your next arrow says:

“The working relationship between DLS and LMT has not been satisfactory from the DLS point of view.”

You refer to uncommitted management and immature operational processes. Does this relate to the same point that you dealt with a moment ago?

**MR MLAMBO**: Yes indeed.

**ADV KENNEDY SC**: Now on the next page that is page 794 if I can just read out I think it is a sentence.

10                    “It is our considered position that given  
Denel’s strategic relationship with LMT and  
despite the challenges at LMT the intended  
sub-contract for the supply of the hull and  
accessories specialised doors and related  
mechanisms should not have been placed  
on tender but rather directly negotiated with  
LMT being a 51% Denel owned subsidiary.  
However given the current status of supply  
chain process followed in this matter we  
advise that the tender process not be  
withdrawn and since no selection or  
pronouncement has yet been made DLS  
20                    simply implements our preferred way  
forward as suggested in this paper without  
further communication.”

So that was the recommendation and then you refer to certain improvements further down where the arrow points are set out. This – this recommendation that you then

prepared and it signed by Mr Wessels and Mr Mhlontlo when the word recommendation appears there who was it a recommendation to?

**MR MLAMBO**: Let me just correct one thing. The author of the document was Mr Wessels and I gave my inputs and so did Mr Mhlontlo. And this recommendation was actually supposed to go to the Group CEO so he could actually apply his mind and see if he could persuade the CEO of Denel Land Systems to reverse his decision.

10 **ADV KENNEDY SC**: Do you know whether it went to Mr Saloojee for approval?

**MR MLAMBO**: Well Mr Wessels had committed to present – to present it to him. I am not aware whether he presented it or not.

**ADV KENNEDY SC**: Thank you. Did Mr Saloojee have any discussions with you about this proposed solution?

**MR MLAMBO**: No we never actually had any discussions on this issue with Mr Saloojee.

20 **ADV KENNEDY SC**: And the upshot of this decision if it had been implemented would that have meant that VR Laser would or would not get any work for this project – for this part of the project?

**MR MLAMBO**: It effectively meant that the work was going to be given to LMT a subsidiary of Denel which would have made me happy.

**ADV KENNEDY SC:** Right. Did you believe that it was resolved on this basis?

**MR MLAMBO:** Well I assumed that because I had the support of two key executives the Group COO and Group FD that Mr Saloojee would actually have no choice but to accommodate this proposal.

**ADV KENNEDY SC:** Now your affidavit refers to your being shocked about what you learnt thereafter. Can you tell the Chair please what you learnt and why you were  
10 shocked?

**MR MLAMBO:** I was actually shocked to learn a few months later that the business or the contract on the Platform hulls had actually been approved on the 16 October which was the following month and awarded to VR Laser. That was without my knowledge.

**ADV KENNEDY SC:** And apart from the input you had previously given in the emails and your discussions with the officials – your email to Mr Saloojee etcetera and the position paper had there ever any – been any opportunity  
20 given to you prior to your learning that there was this award to give input?

**MR MLAMBO:** No in fact the award to VR Laser was actually kept a secret because it was a few months later that I became aware of that. And that boggles the mind because as a group you know supply chain executives had

given the quantum of this contract I should actually have known about it. And initially this was above R200 million and I would have been required to present in support of Mr Saloojee the proposal to the board. Because anything above R200 million had to be presented to the board.

**ADV KENNEDY SC:** May I take you please to the same bundle page 797. It is one of the attachments to your affidavit.

**CHAIRPERSON:** What is the page number?

10 **ADV KENNEDY SC:** 797.

**CHAIRPERSON:** Okay thank you.

**ADV KENNEDY SC:** Do you have that?

**MR MLAMBO:** Yes I do.

**ADV KENNEDY SC:** What is this document?

**MR MLAMBO:** This is a submission or do not know- Supply Chain submission for the approval of the Platform hulls.

**ADV KENNEDY SC:** Is that the – is that the procurement that we have been dealing with yesterday and today?

20 **MR MLAMBO:** Yes it is Chair.

**ADV KENNEDY SC:** And what is the outcome of this document? What does it record?

**MR MLAMBO:** Well the outcome of this document is that approval was granted to give the contract to VR Laser for the manufacture of 183 Platform hulls. But what is actually

notable here is that I was deliberately left out because of my position and in – in terms of the Delegation of Authority I was actually supposed to be the one that approving before the Group CEO could sign.

**ADV KENNEDY SC:** Now if we look at the signatures page 804 there is a recommendation from DLS EXCO. It has the signature of Ms Malahlela who has already given evidence in relation to this recommendation and how she came to sign it. It is also a recommendation from – is it Ms Africa.

10 **MR MLAMBO:** Mr –

**ADV KENNEDY SC:** [00:21:55] Africa, Mr Teubes, Mr Burger and from the DCO the recommendation – sorry the COO Mr Wessels as well as the Group CFO Mr Mhlontlo, correct?

**MR MLAMBO:** It is correct Chair.

**ADV KENNEDY SC:** And then we see the signature of Mr Saloojee on page 806 for the approval of the recommendation. He will give evidence that he did sign this as approving it as Group CEO. Now you have raised a  
20 couple of difficulties in relation to this process. Firstly that you were – this was done behind your back as it were. Is that a fair representation?

**MR MLAMBO:** Ja it is true because I learnt late after discovering that this contract had been awarded to VR Laser. But there was a meeting as you can see all the

dates – all the dates are on the same day the 16<sup>th</sup>.

**ADV KENNEDY SC:** Yes including Mr Saloojee's.

**MR MLAMBO:** Yes. So there was a meeting – the reason why I was not invited to that meeting baffles me.

**ADV KENNEDY SC:** You have indicated to the Chair that you should have confirmed compliance with the processes before such a contract could be approved.

**MR MLAMBO:** Indeed.

**ADV KENNEDY SC:** And you had specifically said it did  
10 not comply with the processes?

**MR MLAMBO:** Yes that is correct Chair.

**ADV KENNEDY SC:** And also you have said that the board's approval was required but it was approved instead by Mr Saloojee?

**MR MLAMBO:** That is my understanding. I am not aware that this approval was presented to the board.

**ADV KENNEDY SC:** Yes we...

**MR MLAMBO:** Which was initially over R200 million.

**CHAIRPERSON:** Mr Kennedy this cannot be the document  
20 that Ms Malahlela said was amended had come from her but was amended without her knowledge he?

**ADV KENNEDY SC:** No it is different.

**CHAIRPERSON:** That one must be another one?

**ADV KENNEDY SC:** That is correct Chair.

**CHAIRPERSON:** Okay alright.



**ADV KENNEDY SC:** Yes. Mr Mlambo can I just put to you a point that Mr Wessels has indicated to us as a team where he – his version diverges from yours to an extent. What his version is; is that the – the solution that was found was suggested by him to this dilemma and it meant that work would be split between VR Laser and LMT. And LMT would only do certain components such as the rear door and VR Laser would do the rest. Is that – was that discussed with you? If I can just take you back to your  
10 position paper there seems to be a reference to rear door work being done. Page 794.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** If you look at – if I can just take you to the place and then you can continue. 794 the second paragraph:

20 “We recommend that DLS should implement an on-sight satellite project office at LMT the full level four sub-contract package for the supply of the welded hull plus accessories doors and mechanisms should be contracted in a single directly negotiated way with LMT etcetera.”

Please continue. Do you recall discussions of LMT doing work such as the door and VR Laser doing the rest?

**MR MLAMBO:** No what was actually agreed was that LMT

in addition to the hulls would actually be given the contract to manufacture the doors as well – the rear doors.

**ADV KENNEDY SC:** Were the doors not part of this contract?

**MR MLAMBO:** No, no the doors were actually a separate contract altogether.

**ADV KENNEDY SC:** So am I understanding you correctly that the – that the hulls that were – that were recommended for approval to go to VR Laser you had  
10 objected to?

**MR MLAMBO:** Yes and that remained my position throughout.

**ADV KENNEDY SC:** Right.

**MR MLAMBO:** There was ample capacity at LMT and if there were any production related issues and governance issues it was our responsibility as the executive team of Denel to address those without having to take the business away from the LMT.

**ADV KENNEDY SC:** So the solution that you found with Mr  
20 Wessels as you understood it reflected in the position paper was that VR Laser would get no work under the hull contract. That work would go to LMT because it was an in-house company and it was good on price and capacity and so forth. Management and performance issues would be resolved and in addition LMT would get further work on top

of the hulls such as the doors?

**MR MLAMBO**: Yes I was actually not prepared to compromise. In instances where there was capability and capacity within any of the group divisions of subsidiaries there was no question about going out on tender. And it was also quite explicit in the group Supply Chain Policy. I think that is quoted in other parts of this evidence.

**ADV KENNEDY SC**: Now to the extent that Mr Wessels or Mr Saloojee may tell the commission that this was a  
10 solution – this was a compromise VR Laser would get – would get – get the main part of the work – LMT would get some other work and that this resolved the concerns that you had raised. Do you believe that your concerns and objections were answered or not – properly answered or not?

**MR MLAMBO**: No certainly not. Basically that would also mean that we would have to go back and amend the Group Supply Chain Policy to say there are instances when even if we have the capability and capacity we could actually  
20 outsource the work. And that effectively means from a governance point of view – because if you amend the policy it has to be presented to the board that the board would have to approve that. And it is a long process. And I saw no reason why we should even debate the issue about giving work a group division or subsidiary. To me it

is just common sense. It must be done.

**ADV KENNEDY SC:** Now if I can take you please to your affidavit page 711. Paragraph 3.16.

**MR MLAMBO:** 711.

**ADV KENNEDY SC:** 711. Top number.

**MR MLAMBO:** This paragraph ...[intervenes]

**ADV KENNEDY SC:** On this page, on the following page in your paragraphs 3.16 and 3.17. You refer to what seems to be some history, background about the acquisition of LMT or  
10 the acquisition of a majority shareholding.

Is there anything that you want to add to what you have said to the Chair yesterday in relation to LMT and why it was significant in relation to the award of this business, to LMT, the Hull contract?

**MR MLAMBO:** Ja, in my case, as board... former board member of DLS, Mr Burger himself is the one himself that presented the proposal that Denel must seriously consider acquiring LMT.

LMT has got those strategy capabilities that Denel needs  
20 particular insofar as the execution of the Hoefyster contract was concerned.

He actually went on to say without LMT, Denel would have serious challenges executing the Hoefyster contract. So that was his presentation.

So he is about ten – it actually horrified me and I

thought something was actually amiss. There is something that just did not make sense in what he suddenly decided to pursue.

**CHAIRPERSON:** That is Mr Burger?

**MR MLAMBO:** That is Mr Burger.

**CHAIRPERSON:** H'm.

**ADV KENNEDY SC:** Mr Mlambo, may we now turn to a section of your affidavit, paragraph 4 which is headed into interference by Messrs Burger and Thebus with the integrity  
10 of the procurement process at DOS.

And you refer to a number of emails that the Commission's investigators had shown you that were exchanged between Mr Thebus and Ms Malahlela and Mr Thebus.

**MR MLAMBO:** H'm.

**ADV KENNEDY SC:** Dealing with why they felt that VR Laser should still get what Thebus, in particular, and Burger felt that VR Laser should nonetheless be awarded the contract. You indicated that you had... you were not copied  
20 in on those emails at the time.

**MR MLAMBO:** Yes, that is true. Although, I was horrified by the content of some of those emails but when I thought about the ones they had actually exchanged with me, it actually made sense because it was the same line of reasoning.

They were engaging, Ms Malahlela on the process whilst it was still on to establish where the process was and what the prospects were of VR Laser getting the business.

And also, one of the comments that Mr Burger raised in one of the emails was whether the inputs from Patria which had actually conducted an onsite assessment of the three companies, was incorporated into the evaluation process.

In fact, Ms Malahlela should have said to Mr Burger at the time: I am not at liberty to discuss the finer details of  
10 the evaluation process because we are not supposed to be influenced by anyone.

And the evaluators are expected to focus on what they had stipulated with the performance criteria. The issue of the audit report by Patria was totally irrelevant.

You cannot introduce strenuous factors to the evaluation process. The minute you deviate from what you had stipulated with the evaluation criteria, that actually compromises your... the integrity of your evaluation process.

So that should never have been discussed. And the  
20 mere fact that he also pointed out that he was going to engage with other parties outside the normal channels to ensure that the price was dropped.

So it as a predetermined outcome that VR Laser had to get the business. So this was actually a waste of time to get people to evaluate the inputs in the first place.

And at some stage, I personally felt that I should not have even pointed out the flaws in the process because the process was so flawed that it just did not even merit consideration.

The outcome thereof was totally unacceptable. It should have been rejected on any grounds by anyone.

**ADV KENNEDY SC:** May I ask you now please to turn to page 809? It is 808, in fact.

**MR MLAMBO:** Eight, zero... Yes.

10 **CHAIRPERSON:** Eight, zero ...[intervenes]

**ADV KENNEDY SC:** In our affidavit, as I have pointed out earlier, you deal with the history that goes back to the acquisition of LMT. So these are minutes of a special DLS board meeting. Now that is the Division Board.

**MR MLAMBO:** Yes.

**ADV KENNEDY SC:** On the 31<sup>st</sup> of March 2011. And why is this significant in your view, particularly if you have regard to paragraph 6 of the minute?

20 **MR MLAMBO:** This is one of the sets of minutes that confirms that Mr Burger was actually extremely supportive and very enthusiastic about Denel acquiring LMT. So it is one of those sets of minutes that confirms my position.

It is unfortunate that the others with actually more specific details that we could not get hold of because I have already left Denel.

**CHAIRPERSON:** I am sorry. Which part of those minutes reveals Mr Burger's support for LMT?

**MR MLAMBO:** That is part 6 of the minute.

**CHAIRPERSON:** Is it 809?

**MR MLAMBO:** 809. That is right.

**CHAIRPERSON:** Ja? Is what is in the... The chairman started by saying:

10 "He took the documents submitted for discussion as read by all. Mr Burger gave some background with reference to previous minutes in which the LMT opportunity was discussed at a previous Denel Board sub-committee meeting.

It was already agreed that a BBEE investor is brought onboard with DLS keeping majority and some interest.

20 Mr Burger explained that the previous option agreement of 70% will change to only 51% but the risk for DLS will substantially decrease by the inclusion of Kamozi(?) which the financial investment of R 20 million ...[indistinct] and Denel is now R 10 million facility."

Okay so basically what is in the... in that column, is what you say, shows Mr Burger's support for LMT, for the acquisition of LMT.

**MR MLAMBO:** And also selling a stake to Kamozi.



**CHAIRPERSON**: Yes.

**MR MLAMBO**: At the time a black owned company.

**CHAIRPERSON**: Okay. H'm. Okay. Mr Burger(sic).

**ADV KENNEDY SC**: Thank you. May I draw your attention to the very last small paragraph in that column.

“The new investor is also buying in on the basis of the future value of the combined businesses of the three parties and from more strategic reasons than financial reasons.

10           The proposal is that DLS and Denel should exercise the option within one year.”

Now you mentioned earlier in your evidence yesterday that there was a strategic reason that Denel felt persuaded by to acquire LMT. What was your understanding of that strategic reasoning from a group point of view?

**MR MLAMBO**: Well, one of the critical strategic points that we were looking at, was that LMT had the capability to design vehicles, which in our case was not that much work. So that was a plus.

20           And the other capability was that LMT could actually manufacture and assemble vehicles. And Platform House actually make up part of that pool of products that LMT could manufacture.

**ADV KENNEDY SC**: And was there an importance attached to having that capacity brought in-house, as it were, as a

partly owned subsidiary of Denel?

**MR MLAMBO**: Yes, it was actually critical to have that capability for Denel but because we were only looking at future opportunities offshore at the time. And LMT was well-placed to actually help us access those opportunities.

When we applied LMT, it already had contracts in the Middle East. And we actually felt that the Middle East was a growing market for Denel and that was priorities for us but we needed to have all the critical capabilities to be able to  
10 take advantage of that market.

**ADV KENNEDY SC**: Now Mr Mlambo, may we now turn to paragraph 5 of your affidavit? You do not need to go to it yourself. I am just giving it as a guidance of the Chair. You deal with the enquiries submitted to VR Laser Services regarding the identity of its individual shareholders.

And you referred to Ms Malahlela taking certain action in that regard and she has given evidence on the enquiry she made. And then you say you engage in correspondence with Mr Aurora of the Managing Director of VR Laser.

20 **MR MLAMBO**: Yes.

**ADV KENNEDY SC**: How did that come about? How did it come about that you were aware of it and you started intervening or taking action?

**MR MLAMBO**: Well, I was concerned that despite the fact that each time I receive any correspondence from DLS, there

was this reference to a hundred percent black owned company, 25.1% black woman owned company but I did not have any evidence.

When I requested evidence, initially what I was told was that Elgasolve owned 74.9% of the VR Laser and Craig Shaw Investment owned 25.1% of VR Laser.

And the presupposed that 25.1% was black woman owned. I wanted to know exactly who that individual black woman was but to this day, I never got an answer.

10 The only answer that I received was that, Salim Essa owned the 74.9%. And my instruction to DLS Supply Chain Team was that we should desist from using terms that are actually misleading or that are totally unfounded.

When you say a company is black owned, you must have evidence that it is indeed black owned.

**ADV KENNEDY SC:** May I take you now please to page 822?

**MR MLAMBO:** 822. Yes?

**ADV KENNEDY SC:** Yes. That is a letter from VR Laser's  
20 Chief Operating Officer, Mr Jiyane and that confirms that the shareholders in VR Laser were Elgasolve and Craig Shaw and gives the percentages, 74.9% and 25.1%.

**MR MLAMBO:** H'm.

**ADV KENNEDY SC:** That they are the shareholders. They do not have any involvement or conflict doing business with

Denel or the shareholders or directors of private individuals who do not work for government.

It did not disclose though who the shareholders of those companies were and that was your concern. Do I understand your earlier evidence right?

**MR MLAMBO**: Yes, and that is why, yesterday when I was asked a question about the conflict of interest that I had referred to in one of my emails. DLS was actually of the view that because they had received these two declarations  
10 that, you know, the problem had been solved.

And I had said but there is no mention of all the directors of VR Laser. Even on the document that they had accepted which was supposed to be a valid CIPC document and it was not. They believed that that was correct.

But I said: You must actually insist on getting a CIPC document. And this does not actually address the problem, whether they have the conflict of interest of we know their identity, whether they are black or white or foreigners.

The key issue was also establishing the actual  
20 shareholding of VR Laser, the individuals behind the companies.

But I subsequently received another mail which is probably in my evidence, that when I pushed to find out who the individuals of Craig Shaw were, I was told that Westdawn Investment actually was a hundred percent shareholder of

Craig Shaw Investment.

But I mean, that does not answer my question as well.  
So there was ...[intervenes]

**CHAIRPERSON**: They were trying to answering(?) you  
about entities.

**MR MLAMBO**: Telling me about entities ...[intervenes]

**CHAIRPERSON**: ...and not individuals.

**MR MLAMBO**: ...when my question was quite explicit that I  
wanted to know the individuals behind that shareholding.

10 **CHAIRPERSON**: H'm.

**ADV KENNEDY SC**: If I may take you please to page 817?  
There are a number of other emails. It seems that you  
corresponded not only with Mr Aurora but also Mr Van der  
Merwe of VR Laser. But I can take you to ...[intervenes]

**MR MLAMBO**: One, one...

**ADV KENNEDY SC**: 817. 817 – 8, appears to be an email  
from Mr Aurora apologising for his failure to do something.  
And then he confirms:

20 “There has been a change in shareholding at VR  
Laser.”

And this is where he refers to Elgasolve and Craig Shaw.  
And then he says:

“These two entities are now the sole shareholders in  
VR Laser. Elgasolve ownership rested in Salim  
Essa.”

Correct?

**MR MLAMBO**: Yes, that is correct.

**ADV KENNEDY SC**: And then it says:

“BBEE status a hundred percent South African black owned.”

And then he deals with the other entity that co-owned VR Laser being Craig Shaw. And it says ownership a hundred percent shares owned by Westdawn Investments. Is that the company you mentioned a moment ago?

10 **MR MLAMBO**: Yes, that is the one.

**ADV KENNEDY SC**: And then he says:

“BBEE status. It is a Level 5 BEE contributor. Westdawn is in turn owned by other corporate entities.”

Was that a satisfactory response in your view?

**MR MLAMBO**: No, certainly not. I did not want to know the corporate shareholders. I wanted the individuals. Because BBEE’s certificates actually base their assessment on the individual shareholder.

20 You have to unpack that. You cannot simply accept that Westdawn is hundred percent black owned when you do not have that evidence.

**CHAIRPERSON**: And it is interesting that he obviously thought it was important to mention a particular individual under Elgasolve, Mr Salim Essa. But for the rest, he does

not disclose any individuals. He just gives entities, legal entities only.

**MR MLAMBO**: H'm.

**CHAIRPERSON**: Because if it was... if he had accepted that it was important to give the identity of the individuals in regard to Elgasolve, why did he not think it was equally important to give the identity of individuals in regard to the other entities?

**MR MLAMBO**: Ja, it is because that I saw.

10 **CHAIRPERSON**: H'm.

**ADV KENNEDY SC**: Now page 816, you sent an email back to Mr Aurora. It is on the 21<sup>st</sup> of November. You say:

“Thanks for your response ...[intervenes]

**CHAIRPERSON**: Where are you now?

**MR MLAMBO**: Page 816 Chair.

**CHAIRPERSON**: Oh.

**ADV KENNEDY SC**: Right. This appears to be an email from you back to Mr Aurora thanking him for his response and you say:

20 “I would appreciate it if you could supply the following as well. Details of the individual shareholders in Craig Shaw Investment or Westdawn Investments. Details of the directors of Elgasolve and Craig Shaw, copies of ID's, letters EE status of VR Laser Services.”

Were you ever given proper details to your satisfaction?

**MR MLAMBO**: No, I actually never received any response.

**CHAIRPERSON**: You did not get a response for this one?

**MR MLAMBO**: Ja. I think it was actually putting him in a bind at the time. He realised that he could not disclose. There were some serious issues, I suspected. Because under normal circumstances, this type of information is readily available.

And that begs the question as to whether the verification  
10 urgency that declared VR Laser as hundred percent black  
owned, actually saw the evidence.

**CHAIRPERSON**: Yes.

**MR MLAMBO**: Ja.

**CHAIRPERSON**: H'm.

**MR MLAMBO**: I was actually tempted to write to the Accreditation Board ...[intervenes]

**CHAIRPERSON**: Yes.

**MR MLAMBO**: ...to actually interrogate that.

**CHAIRPERSON**: Yes.

20 **MR MLAMBO**: To say you have the right to exercise that oversight over the performance of these accredited verification urgencies.

**CHAIRPERSON**: H'm. Yes. Ja, when I saw this ...[intervenes]

**ADV KENNEDY SC**: Sorry, apologies Chair ...[intervenes]



**CHAIRPERSON**: I suspected that he would not have got an answer for it. I am just saying, when I read this email of Mr Mlambo to Mr Aurora, somehow something told me that he was unlikely to have gotten an answer. [laughing]

**ADV KENNEDY SC**: Yes.

**CHAIRPERSON**: You may proceed.

**ADV KENNEDY SC**: Thank you, Chair. So now that was correspondence I November 2014 and prior to that. You have indicated, you did not get a response. If I can take you  
10 now to page 820?

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

**ADV KENNEDY SC**: The email about halfway down the page appears to have been from you in March 2015.

**MR MLAMBO**: H'm.

**ADV KENNEDY SC**: So this is four months after your email, more than four months after your email as of 21<sup>st</sup> of November and you address it to Mr Aurora and you say:

20 "This email is a follow-up on the one below dated the 21<sup>st</sup> of November 2014."

Now that is the one that we have just looked at a moment ago, correct?

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

**ADV KENNEDY SC**: Is that correct?

**MR MLAMBO**: That is correct.

**ADV KENNEDY SC:** Yes.

“We are a last month of our financial year-end and the audit process may uncover inconsistencies in Denel’s interactions with its suppliers.”

Then you say:

“It is imperative that all documents are submitted timeously. Failure to do so may result in any future orders being cancelled or put on hold. I trust that you will treat this request with the urgency it requires.”

10

Then there appears to be a response to that on the foot of the previous page, 819 dated the 31<sup>st</sup> of March 2015 from Mr Van der Merwe.

**MR MLAMBO:** Yes, that is correct.

**ADV KENNEDY SC:** And he does not give you the answers that you have asked for but raise these queries. He says:

“Further to my previous email, may I ask the following? I note that JP already provided certain information in his mail of the 4<sup>th</sup> of November.”

20 You, however, requested further details of the shareholders and the directors. Who is the JP, do you know?

**MR MLAMBO:** JP was... or Mr Aurora.

**ADV KENNEDY SC:** Yes. If you look on then previous page, 818. That is the letter that came from Aurora and his

initials are JP. So you believe that is who he is referring to?

**MR MLAMBO**: Page?

**ADV KENNEDY SC**: Page 818, the previous page.

**MR MLAMBO**: 818. Yes, yes, yes. Ja, that is correct.

**ADV KENNEDY SC**: Right. So you understood Mr Van der Merwe to be referring to Mr Aurora ...[intervenes]

**MR MLAMBO**: Ja.

**ADV KENNEDY SC**: ...when he says JP.

**MR MLAMBO**: Yes.

10 **ADV KENNEDY SC**: So he says:

“He has already provided certain information in the email of 4<sup>th</sup> of November.”

Which we have already dealt with. But you requested further details of the shareholders and the directors. That is correct, is it not? You have asked for further details.

**MR MLAMBO**: Yes, that is correct.

**ADV KENNEDY SC**: And then he asks his questions.

20 “In order to provide you with the correct details, can I assume you need the following documents details? Details of shareholders, percentage shareholding in VR Laser, details of the shareholding of the shareholders in VR...”

And then other items that he sets out relating to the directors as well. And you then respond on the 2<sup>nd</sup> of April 2015 in the email at the top of this page.

“Thanks for your response. You have indeed interpreted my request quite well. In light of the request, it is imperative that the claimed one hundred percent black shareholding in VR Laser Services be confirmed through the evidence you will submit.”

You confirm that you repeated your request for this and its importance?

**MR MLAMBO**: Yes, it is correct Chair.

10 **ADV KENNEDY SC**: Now the evidence has been that by this stage in March/April 2015, the contract had already long since been awarded to VR Laser in the process that you have indicated did not meet with your approval.

**MR MLAMBO**: That is correct, Chair.

**ADV KENNEDY SC**: That was on or about the 16<sup>th</sup> of October 2014.

**MR MLAMBO**: Ja.

**ADV KENNEDY SC**: Were you aware of that when you sent this correspondence?

20 **MR MLAMBO**: No, I was not. I was totally in the dark at the time.

**ADV KENNEDY SC**: What were you trying to achieve by getting this information? Were you still under the impression that no contract had been awarded? I doubt this information was relevant to the award of the contract. Was that your

approach?

**MR MLAMBO**: Well, my reference to the end of the financial year has got this significance. Each division is actually evaluated on its progress towards increasing the number of black owned companies in its supplier base.

So a deal as we still had VR Laser that was listed as hundred percent. There is other correspondence that... similar correspondence that I sent to other companies when I was actually in doubt about the correctness of what they had  
10 stated as the black ownership.

So that would actually distort the report if at all DLS would claim that since the beginning of the financial year, they have actually increased their black owned suppliers by this percentage, if at all that was not verified.

So I needed to be sure that whatever company that was listed as black owned was indeed black owned so that I could actually give grade where it was due.

Because there was this ill fate competition amongst divisions that are actually liked(?). And then I would  
20 obviously shower those that were doing well without compromising on quality, of course, in terms of increasing their black supplier base.

Especially, insofar as the core business of Denel was concerned because typically what you find in South Africa is that most black owned companies are actually suppliers that

on the peripheral of the business. They provide doing services, catering.

My focus was on the core business of Denel and VR Laser happened to be in that pool of suppliers.

**ADV KENNEDY SC:** Can I take you back to page 801?

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

**ADV KENNEDY SC:** This is part of the document we looked at earlier that was signed by various executives by not by you which ...[intervenes]

10 **MR MLAMBO:** 801?

**ADV KENNEDY SC:** 801, yes.

**MR MLAMBO:** That table?

**ADV KENNEDY SC:** It is the table. I am just guiding you. This is part of the document that you confirmed earlier that was signed on the 16<sup>th</sup> of October by executives excluding yourself, we see that at page 805, we looked at that earlier.

**MR MLAMBO:** Yes, yes, yes, that is correct.

20 **ADV KENNEDY SC:** As part of this submission that was approved excluding you. They have referred correctly at page 801 to the breakdown for scoring purposes and you see just above the table, basis for comparative offer price, 25%, technical 45%, BEE 30%. So 30% of scoring would actually come from the BEE perspective.

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** Even more than the price. So your

enquiries in relation to the BEE credentials of VR Laser, how important did you regard this as important for purposes a proper evaluation of tenders before they were awarded?

**MR MLAMBO:** It was critical because one of the elements that we looked at was ownership.

**ADV KENNEDY SC:** Thank you.

**MR MLAMBO:** And then also the profile of employees and their skills development, how much the company was  
10 actually spending on the training and development of black employees and then procurement from black owned companies. Those are the four critical categories or elements that we looked at that time.

**ADV KENNEDY SC:** Thank you, I would like to turn to a different topic now and a different contract. Mr Mlambo, you do not need to go back to your statement at this stage, just keep the – just move now to page 824.

**MR MLAMBO:** Page 24, okay.

**ADV KENNEDY SC:** Just for the Chairperson's guidance,  
20 he deals with this, Chair, in paragraph 6 of his affidavit from page 715 and following.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Now you deal there in terms of your heading, Mr Mlambo, with a topic which you described as a single agreement entered into between DLS and VR Laser

Services in 2015. Now we have already dealt with the hull contract.

**MR MLAMBO**: Yes.

**ADV KENNEDY SC**: Yesterday afternoon and this morning. Now this is a different contract, is it?

**MR MLAMBO**: Yes it is, indeed.

**ADV KENNEDY SC**: It was entered into in 2015 and it related to a single source appointment of VR Laser Services by DLS, correct?

10 **MR MLAMBO**: That is correct, Chair.

**ADV KENNEDY SC**: Now I would like you please to look at page 824 and 825, it is a memorandum that comes from Ms Malahlela as executive manager in DLS supply chain department and it was sent addressed to the Denel supply chain executive. Am I right in understanding that that was yourself?

**MR MLAMBO**: That is correct.

**ADV KENNEDY SC**: And did you receive this memorandum?

20 **MR MLAMBO**: Yes, I did, Chair.

**ADV KENNEDY SC**: What did you understand from this memorandum, was the purpose of it and what were you being asked to do?

**MR MLAMBO**: I was actually being asked to approve the single source status of VR Laser to essentially supply



00.04.10 parts and steel components to VR Laser and this was not just limited to – I beg your pardon, to deal as – this was not just limited the Hoefyster contract, that essentially meant that if at all they had any fabrication requirements or steel component requirements they would go to VR Laser.

**ADV KENNEDY SC:** Now she refers in her background section at the top of the text on page 824 to approval being given for the deviation from the normal procurement processes, etcetera, to be used for the T5 demo and group supply chain executive gave an instruction that DLS must first explore how Denel Vehicle Systems, Gear Ratio, that is what is being referred to elsewhere as DVS, is that right?

**MR MLAMBO:** That is correct.

**ADV KENNEDY SC:** That is a sister division of DLS.

**MR MLAMBO:** It is a hundred percent Denel-owned company. We acquired DVS from DAE Systems.

**ADV KENNEDY SC:** And then she refers also to this relating to LMT which, as you have indicated already, was a partly owned company controlled by Denel with a 51% shareholding.

**MR MLAMBO:** H'm.

**ADV KENNEDY SC:** So she seems to be referring to a previous decision by group supply chain executive, in other

words at head office level, to prefer DVS and LMT for the supply of items on the basis that they were in-house, as it were, provided they met the requirements for quality, price and delivery. Is she here reflecting what you were referring to yesterday? Is she correctly reflecting what you understood the group policy to be?

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** Then her next paragraph says:

10            “In terms of the approved supply chain policy and  
              DLS supply chain procedure...”

If I can stop? So, as I understand it, at group level, where you were the group executive, you had your own processes which applied throughout the group and then each division also had its own supply chain procedure which was subject to the group overall.

**MR MLAMBO:** That is correct, the focus at group level was policy and divisions could actually customise their processes to be aligned with a policy.

20            **ADV KENNEDY SC:** And she refers to the group policy  
              saying – and here she has quoted it:

              “Under no circumstances shall products or services that can be procured from a group entity or division be procured from an external supplier or non-Denel company unless there is approval by the group supply chain executive based on sound business

reasons.”

So she is referring here, it seems, to the point that you made yesterday in your evidence that where there is going to be deviation you must approve it.

**MR MLAMBO:** That is correct. This is actually a quote verbatim from the group supply chain policy.

**ADV KENNEDY SC:** Yes. And where we looked yesterday at the delegation of authority and there was a reference to consultation with you as the group supply chain executive  
10 or manager, as it was called there, was that subject to this special provision saying you must not only be consulted if there is to be – if there is a to be a deviation from this, you must also give your approval that it is for sound business reasons.

**MR MLAMBO:** Ja, that is precisely, yes.

**ADV KENNEDY SC:** Then she says in the third paragraph on page 824:

“Having identified a need for a single source  
supplier for the supply of steel components and  
20 fabrications, in May 2015 DLS signed an MOA with VR Laser for this scope of work. VR Laser is a hundred percent black owned entity.”

Now if I can just stop for a moment, you have already expressed your concerns about not have having been satisfied that that is the case.

**MR MLAMBO**: Yes, that is correct, Chair.

**ADV KENNEDY SC**: And then she continues:

“In terms of the MOA VR Laser prices must be market-related and in line with the provisions of the MOA before an order can be placed on them.”

And then she gets to this point:

10 “Due to these contradicting positions supply chain approach DLS Exco to make a decision as to whether to honour the MOA and place the order on VR Laser or to follow the supply chain policy and procure from inter-group namely DVS or LMT for this project. Given the timeframe, urgency and history, Exco has recommended that the work be done by VR Laser. I hereby request permission to implement the Exco decision in this regard.”

Now Ms Malahlela has already given evidence when she told the Chair that her wording here was deliberate to make it clear that she was asking for your approval of this on the instructions of Exco against her own advice. Be that as it  
20 may, I want your comment please.

Effectively, as I understand it and you must correct me if my understanding is wrong. Effectively she was recognising that the group policy required that if work can be done in-house it must be given in-house, not to an outsider subject to price and quality, etcetera.

And secondly, if that is to be done, it has to be done with your approval as group supply chain executive that you are satisfied that there are sound business reasons for deviating, is that correct?

**MR MLAMBO:** Ja, that is correct.

**ADV KENNEDY SC:** And then what she is saying is, she is saying what has actually happened has been that VR Laser, a non-group entity has been awarded this contract already and there is a contradiction between that and the  
10 policy and Exco has said they want you to approve it. Is my understanding correct of his memo?

**MR MLAMBO:** Yes, that is actually the gist of the request, for me to approve the deviation from policy knowing full well that there is capability and capacity within the group which I thought was ridiculous.

**ADV KENNEDY SC:** And we will get to why in a moment but the main point that you had to use as a test for whether to not to give approval was whether it was for sound business reasons not to give the work in-house but to give  
20 it to an outsider.

**MR MLAMBO:** Yes.

**ADV KENNEDY SC:** That was the test that you had to apply.

**MR MLAMBO:** Ja, that is correct and if in-house we did not have enough capacity, you could have such instances

and to avoid a programme slipping and with the risk of having to pay penalties, sometimes it would make sense to outsource part of the work to an external company but that must be properly motivated and that is the reason why I noted here that if DVS and LMT could furnish reasons as to why they cannot execute this work, I would approve the deviation but that never materialised.

**ADV KENNEDY SC:** So let me – I am sorry.

**CHAIRPERSON:** I see the time seems to be for the tea  
10 break, Mr Kennedy.

**ADV KENNEDY SC:** Oh, I am sorry, I did not realise, sorry, Chair.

**CHAIRPERSON:** Yes but if there is one question you want to finalise before?

**ADV KENNEDY SC:** Perhaps I can just finish this thought.

**CHAIRPERSON:** Ja, okay.

**ADV KENNEDY SC:** Because he has just mentioned his notes. Thank you, Chair.

**CHAIRPERSON:** Yes.

20 **ADV KENNEDY SC:** For the record, may I then, Chair, just read into the record – Mr Mlambo, your note that you are referred to, is that the handwritten note slotting MB?

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** And is that your handwriting?

**MR MLAMBO:** It is my handwriting.

**ADV KENNEDY SC:** If I can just read it out:

“DVS and LMT...”

Those are the in-house entities.

“...must submit proof that they cannot meet the requirements prior to the contract being awarded to VR Laser.”

So you are saying that – you said a moment ago that this is what you meant, they have to show that they do not have the capacity. If they do not have the capacity you would  
10 feel there is a good business reason to award it outside the group but that has to be shown.

**MR MLAMBO:** Yes, I needed to be convinced that they did not have the capacity and there was a risk that we could actually miss our delivery deadline which is a very serious thing in the defence industry. If you miss your delivery milestones you could actually lose the entire profit on that contract because of that so you have to have sound programme management in place.

**ADV KENNEDY SC:** Okay, if I might just have one further  
20 question?

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** And you say that that proof has to be given by the in-house companies prior to the contract being awarded. It seems from the body of Ms Malahlela’s letter in the second last paragraph on page 824 that she

confirms that DLS had already signed the memorandum of agreement with VR Laser in May 2015, five months before they were asking you to approve it. Any comment on that?

**MR MLAMBO:** Ja, it is also one of those dodgy contracts that they entered into and to my surprise, at the time it was Zwelakhe Ntshepe who was the Group CEO, Mr Saloojee had already been suspended and he actually overturned my decision, as you can see his signature over the – without even consulting with me.

10 **ADV KENNEDY SC:** Are you referring to his signature, Mr Ntshepe’s signature on page 825?

**MR MLAMBO:** Yes, that is correct.

**ADV KENNEDY SC:** And above his signature someone has written in the word “approved” is that your handwriting?

**MR MLAMBO:** No, I rejected this, so it was actually Mr Ntshepe himself who wrote approved.

**CHAIRPERSON:** And you know his handwriting?

20 **MR MLAMBO:** Yes, it is his handwriting and it is his signature.

**CHAIRPERSON:** Yes.

**MR MLAMBO:** He was the Group CEO at the time.

**CHAIRPERSON:** Do you – what was your understanding of what he was approving because based on where he put – he wrote approved and put his signature, one does not



know on the face of it whether he was approving your comment that DVS and LMT must submit proof that they cannot meet the requirements prior to the contracts being awarded to VR Laser or whether he was furnishing his approval of what Ms Malahlela wanted in her memo. What was your understanding of what he was approving?

**MR MLAMBO:** Chair, he was actually overturning my decision and approving the request.

**CHAIRPERSON:** Okay, so ...[intervenes]

10 **MR MLAMBO:** Without even consulting with me.

**CHAIRPERSON:** Yes. Okay, alright.

**MR MLAMBO:** So his loyalty was outside Denel.

**CHAIRPERSON:** Yes. Okay, alright. So he was overriding what you had just said in that note?

**MR MLAMBO:** That is correct, Sir.

**CHAIRPERSON:** Ja, okay. Alright, we are going to take the tea break.

**ADV KENNEDY SC:** Thank you, Chair.

20 **CHAIRPERSON:** On a light note, I just want to declare that I did not communicate with Mr Kennedy or Mr Mlambo or Registrar Mr Mfeka about the colour of the ties we must wear this morning. I did not talk to anybody, I do not know about the three of you but I did not talk to anybody.

**ADV KENNEDY SC:** We follow judicial precedents.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** I found that there is another culprit, one of my protectors is wearing a similar tie.

**ADV KENNEDY SC:** It is spreading like a virus, Chair.

**CHAIRPERSON:** Okay, thank you, let us continue.

**ADV KENNEDY SC:** Thank you, Chair. Mr Mlambo, we were talking about the refusal by you to sign Ms Malahlela's memorandum where she conveyed Exco's  
10 request, DLS Exco's request for you to approve the award of the single source contract to VR Laser which you say was overruled by Mr Ntshepe as CEO. Can I take you now to page 837?

**CHAIRPERSON:** Just before that, Mr Kennedy, neither you, Mr Mlambo nor Mr Ntshepe indicated the date when you respectively signed on this page. Do you have a recollection of whether you got this memo on the same date which is 29 October 2015 and you made your note then or that you got it maybe a day or two after and you made this  
20 note there?

**MR MLAMBO:** Actually I cannot recall the date.

**CHAIRPERSON:** You cannot recall. You cannot recall also how soon after receiving it you made the note?

**MR MLAMBO:** But I would imagine this was shortly after the 29 October 2015.

**CHAIRPERSON:** Yes. Okay, alright.

**ADV KENNEDY SC:** Thank you. May I then turn to page 837? This is a letter from Stephan Burger, DLS' CEO, it was addressed to you and at the end of the letter there is a blank space where it says approved by, approval Dennis Mlambo, Group Supply Chain Executive. So was this an attempt by Mr Burger to get you to again to give approval?

**MR MLAMBO:** Yes, it is true, Chair, but they had actually added other products that they wanted me to approve, the  
10 fire compartment module and the outer shields were added here.

**ADV KENNEDY SC:** And here the document has the date in small print on page 837, 29 April 2016. So this is long after the date of Ms Malahlela's memorandum that the Chair has just been asking you about.

**MR MLAMBO:** That is correct, that is correct.

**ADV KENNEDY SC:** And then Mr Burger starts by thanking you for a meeting held at DCO with Mr Odwa Mhlwana and yourself on the 28 April 2016. Do you  
20 confirm that you had such a meeting?

**MR MLAMBO:** Yes, Chair, that is true.

**ADV KENNEDY SC:** And then he says in paragraph 2 that he confirms you discussion that a single source supplier agreement, the MOA had been entered into with VR Laser on the 19 May 2015 pursuant to a motivation being

submitted to DCO. It was recommended for approval by both the then Group Executive Business Development, Mr Zwelakhe Ntshepe. Is that the same person who later acted as Group CEO when Mr Saloojee was suspended?

**MR MLAMBO:** Yes, that is correct, Chair.

**ADV KENNEDY SC:** There is also recommended by the Group COO, Mr Jan Wessels, was then approved by the Group CEO at the time, Riaz Saloojee and then he says:

10           “That approval by Mr Saloojee is in accordance with Regulation 16A (6)(4) of National Treasury regulations. Copy of the approval was signed, MOA and the applicable National Treasury regulation is attached, marked A, B and C.”

Now those annexure do not appear as attachments to your letter but your affidavit has quoted the regulation. If I can just have a moment? Yes, Mr Mlambo, I think we will just keep the letter in front of you, but I just want to give the Chair the reference. Chair, the regulation is quoted in the text of his affidavit at page 719, paragraph 6.16 and I am  
20 just going to read out from our affidavit your quotation of the regulation.

“If in a specific case it is impractical to invite competitive bids the accounting officer or accounting authority may procure the required goods or services by other means provided that the

reasons for deviating from competitive bids must be recorded and approved by the accounting officer or accounting authority.”

Are you familiar with that regulation?

**MR MLAMBO:** Yes, it is actually an instruction note from National Treasury. I am very much familiar with ...[intervenes]

**ADV KENNEDY SC:** Is it binding on Denel?

**MR MLAMBO:** Yes, all Schedule 2 and 3 companies are  
10 bound by that.

**ADV KENNEDY SC:** Then to continue in Mr Burger’s letter at the foot of page 837, he says:

“As indicated during the meeting and in terms of the abovementioned approval by the Group CEO the rationale for appointing VR Laser as a sole supplier was based on *inter alia* the following:

1. Its unparalleled expertise on fabrication of complex engineering systems which includes but is not limited to turrets, outer shield, add on  
20 armour and vehicles hull structure.
2. It is a key supplier and strategy partner to DLS.
3. It offers the best value having *inter alia* committed to invest capital and resources in its facilities in order to ensure that the capability remains intact and available to deal is for a

minimum period of 10 years.

4. It is prepared to assist and has established DLS with its obligations in foreign jurisdictions such as Malaysia in transferring skills relating to its manufacturing process.”

The IP is referred to and then:

5. It promotes a black industrialist entrepreneurial company within the defence industry.”

And then he concludes by saying:

- 10 “It is hereby recommended that the attached submissions relating to the fire compartment module FCM and the outer shield marked D and C respectively be sourced via VR Laser in accordance with the terms and conditions of the MOA.”

Is the last paragraph the reference to the additional work that he was asking for approval?

**MR MLAMBO:** That is correct, Chair.

- ADV KENNEDY SC:** And the earlier part of the letter referred to the previous award of the contract without your approval to VR Laser of the single source provision.
- 20

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** So he asks for your approval and you have indicated that you refused that.

**MR MLAMBO:** Yes, I always made sure that if I rejected something I gave reasons in writing and those are the four

reasons that I gave.

**ADV KENNEDY SC:** Are those the reasons in the handwritten portion next to the letters NB?

**MR MLAMBO:** That is correct.

**ADV KENNEDY SC:** Below the blank line that was meant for your signature to approve you instead refused to sign that and instead set out your reasons for refusal.

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** And again is that you signature at  
10 the bottom right after this handwriting?

**MR MLAMBO:** Yes.

**ADV KENNEDY SC:** If I may read for the record your note:

- “1. The evidence on how VR Laser was selected is not available to support the appointment as a single source supplier.
2. The approval process of the MOA excluded supply chain and the reasons thereof have not been furnished.
- 20 3. The recommendation is given the fact that Denel executive committed the company to place orders on VR Laser for specified products for ten years to have the same executives approve future orders.”

Just explain that please?

**MR MLAMBO:** Basically what I was saying, Chair, is that I am not going to entertain this because I was not party to the memorandum of agreement. Those who entered into that agreement are the ones that must actually approve future transactions which were at any rate going to be irregular.

**ADV KENNEDY SC:** And then paragraph 4 sets our your final reason for rejection:

10           “The paragraph in treasury regulations that has been cited...”

I am afraid, Chair, the photocopying has cut off a couple of letters on the right hand side but it seems to be:

“...that has been cited in the motivation memo.”

Is that the provision of the Treasury instruction note I read out earlier that you are referring to?

**MR MLAMBO:** It is correct, I can read the rest of it.

**ADV KENNEDY SC:** Yes, thank you.

20           **MR MLAMBO:** “The paragraph in treasury regulations that has been cited in the motivation memo is relevant because it was not impractical to test the supply market.”

This instruction note deals essentially with emergency procurement. If emergency procurement you do not really have the luxury of getting quotes but in this particular instance it was actually quite possible. Assuming that we



did not have the capability within the group it was possible to go out and find a suitable supplier at a competitive rate.

**CHAIRPERSON:** Well, it is the second time that it looks like somebody who is going to testify here who relied on this provision does not seem on the fact of it to understand what impractical means. I did have another witness here in relation to the Free State evidence, the then CFO of the Department of Agriculture said she relied on this provision for supporting that a certain job should not be sent out to  
10 open tender but I asked her what her understanding of impractical is and it seems here – I mean, when you look at Mr Burger’s reasons, there seems to be nothing that shows that it was impractical to invite bids because that is what this provision says, you know, if it must be impractical to invite other bids before you can invoke it. So that is the point I think you make in your last reason but Mr Burger will come here, maybe he will persuade me that actually it was impractical.

**ADV KENNEDY SC:** Yes, he will be giving evidence at a  
20 later stage, Chair.

**CHAIRPERSON:** Yes, yes.

**ADV KENNEDY SC:** And he will be asked to deal with that.

**CHAIRPERSON:** Yes, yes.

**ADV KENNEDY SC:** May I ask the witness, Chair, to just

give an example of what you understand would constitute the type of emergency that makes it impractical.

**MR MLAMBO:** Well, if there is a thunderstorm, it blows off the roof of a house and you actually need to protect the assets within the house you can actually justify going out to one service provider or roofing contractor to do the work because you cannot wait seven days or three weeks before you get the work done. If life is actually threatened or your assets are actually threatened in the process you are  
10 justified in going to just one service provider but the expectation is that you must keep a record of that so that when you are audited you can prove beyond any doubt that indeed this was an emergency, you did not have valuables to wait for two weeks or three weeks before you could have the problem addressed.

**CHAIRPERSON:** In other words, you cannot rely on how good a particular service provider is to justify invoking this regulation, you cannot say they are so good, they are international, they are this, they provide, you know,  
20 excellent service. That is not a reason to invoke this ...[intervenes]

**MR MLAMBO:** Certainly not otherwise that would nullify the notion of going out on tender.

**CHAIRPERSON:** Yes, because ...[intervenes]

**MR MLAMBO:** Because the very reason why we go out on

tender is to actually establish who of the tenderers or bidders is the best in terms of the work that is required or the service that is required and the price, you know, to do the job.

**CHAIRPERSON:** Ja because when you look at the reasons that Mr Burger gives, he says one, it is unparalleled expertise on fabrication of complex engineering systems. That is just about how good it is in his view. Then he says it is a key supplier and strategic partner of DLS, that says nothing about impracticality. He says it offers the best value. That says nothing about the impracticality. And then he goes on. But, as I read this it just seems to me that he may have I misunderstood what impracticality means in that provision but he will come and he will explain and maybe he will give us a certain perspective. Yes, Mr Kennedy.

**ADV KENNEDY SC:** Thank you, Chair. What was the outcome of this – your second – the second time that you were refusing to give your approval or a contract that had already been awarded? What then happened with that?

**MR MLAMBO:** I seem to recall it may well be in this – in my evidence that this was also overruled.

**ADV KENNEDY SC:** Yes. Yes, you are right, you do say that. Let me just get you the ...[intervenes]

**CHAIRPERSON:** Ja, I see at 839 there is something written Mr Ntshepe overruling Mr Mlambo's rejection. I guess that is what he said, 840, I assume.

**ADV KENNEDY SC:** Sorry, did you mention 849?

**CHAIRPERSON:** No, I said 839.

**ADV KENNEDY SC:** 839, thank you.

**CHAIRPERSON:** Ja, it says Mr Ntshepe overruling Mr Mlambo's rejection.

**ADV KENNEDY SC:** Yes.

10 **CHAIRPERSON:** Then 840 I think must be the annexure where – okay, no, no, I am sorry, 840 is something else but there is a note at 839.

**ADV KENNEDY SC:** Yes, Chair, may I just indicate, his affidavit, the witness's affidavit refers to this annexure as being showing that Mr Ntshepe overruled. This, of course, is the same document that we looked at a bit earlier.

**CHAIRPERSON:** Oh, yes, yes.

**ADV KENNEDY SC:** And that was at page 824 to 5. It is exactly the same document.

20 **CHAIRPERSON:** Yes. Well, I am looking at 841 where Mr Ntshepe wrote "Approved" and then put his signature.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** So that must be overruling that is being referred to.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV KENNEDY SC:** May I just ask the witness to confirm that? Mr Mlambo you have referred to this at 841 as being the overruling by Mr Ntshepe.

**MR MLAMBO:** 841, yes, that is Mr Ntshepe.

**ADV KENNEDY SC:** Right.

**MR MLAMBO:** Overrule or overturning my decision.

**ADV KENNEDY SC:** Right. Okay, thank you. Now we can move off this contract. So we have dealt with now the  
10 second contract which is the VLS contract awarded for a sole supply – single supplier to VR Laser. Now is it correct that there was another process followed by DVS, Denel Vehicle Systems to award a similar contract for their product needs to VR Laser as a single source supplier?

**MR MLAMBO:** That is correct.

**ADV KENNEDY SC:** Now you deal with that in your affidavit. If I can just give the Chair the reference, that is from page 722, Chair. Now may I take you ...[intervenes]3

**CHAIRPERSON:** 722?

20 **ADV KENNEDY SC:** 722, yes.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** May I take you now, Mr Mlambo to a document that you referred to in your affidavit that relates to this. If I can take you please to 843.

**MR MLAMBO:** To page 843?

**ADV KENNEDY SC:** 843, that is correct.

**MR MLAMBO:** Yes, I found it.

**ADV KENNEDY SC:** Now the first email there seems to be an email from a Mr Johan Steyn, is that correct?

**MR MLAMBO:** Yes, it is.

**ADV KENNEDY SC:** Who was Mr Steyn in the Denel Group?

**MR MLAMBO:** Mr Steyn was the Chief Executive Officer of DVS, Denel Vehicle Systems.

10 **ADV KENNEDY SC:** So he was the equivalent of Mr Stephan Burger in the other division, DLS?

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** Alright. Now I am just going to read the first few lines:

“Since Zwelakhe’s surprising instruction to me a few weeks ago to enter into an agreement with VRL we have made good progress with Johan Wessels’ help and we have had several discussions with VRL...”

Which I understand to mean VR Laser.

20 “...and DCO about this.”

Now can you tell the Chair please, we know that DLS has had a contract awarded to VR Laser for its specific requirements on a single source supplier basis for ten years. That was despite the fact that they did not comply with processes and did not get your approval a number of

times. You have given evidence on that.

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** Now can you tell the Chair please what was being proposed in relation to DVS?

**MR MLAMBO:** Mr Ntshepe, who was at the time the Group CEO, had instructed Mr Johan Steyn, CEO of DVS, to enter into a similar agreement with VR Laser and this is what Mr Steyn is describing as a surprising instruction. DVS and LMT basically have very much similar capabilities and that  
10 is why in some of my rejection notes I mentioned the two companies as to why they are not being contracted to do the work instead of VR Laser.

**CHAIRPERSON:** Do you remember whether Mr Ntshepe was Acting Group CEO or Group CEO at the time?

**MR MLAMBO:** At the time if it is – 2019 he was already ...[intervenes]

**CHAIRPERSON:** Of November 2015.

**MR MLAMBO:** 2015 he was Acting then because Mr Saloojee was ...[intervenes]

20 **CHAIRPERSON:** On suspension.

**MR MLAMBO:** Suspended in – I think it was ...[intervenes]

**CHAIRPERSON:** September 2015.

**MR MLAMBO:** September 2015.

**CHAIRPERSON:** Ja. Okay, so he was acting.

**MR MLAMBO:** Ja and he was appointed as the Acting Group CEO.

**CHAIRPERSON:** Yes and I think Mr Saloojee left sometime in 2016 or early 2017, I cannot remember. Ja, okay.

**ADV KENNEDY SC:** Thank you. And were you asked for your approval from the supply chain management executive's perspective for what was being proposed?

**MR MLAMBO:** Yes, Chair, I was actually approached  
10 about that and I actually rejected that proposal and I seem to recall that Mr Steyn had actually been told by Mr Ntshepe that you are reporting to me, you cannot take instructions from Mr Mlambo. That is what Mr Steyn told me and he said to me what can I do? I said do what is right for the business, I am not afraid of anyone. He must confront me and let me know why he actually insists that you have to outsource work that you can do yourself because Mr Steyn actually pointed out that by outsourcing that work, that was actually going to cost him about 15%  
20 more to do that and it just did not make sense and I said to him then do what is right. I have made it very clear, it is in writing, I am rejecting that, you are not going to outsource that. But then he is the Group CEO and he felt that he had all the rights to overturn my decision and he did just that to the detriment of the business.



**ADV KENNEDY SC:** Was there any financial detriment?

**MR MLAMBO:** Ja, there was – at that time there was surplus capacity at DVS which could not be utilised because the Group CEO, Mr Ntshepe that time, insisted that the work be outsourced to VR Laser. So that definitely had an adverse impact on the financials of the group.

**ADV KENNEDY SC:** You refer in your affidavit to Mr Steyn discussing a higher cost that would be involved with  
10 VR Laser. Do you recall that?

**MR MLAMBO:** Yes, I do recall that.

**ADV KENNEDY SC:** What did he tell you?

**MR MLAMBO:** That it was going to increase his costs by at least 15%.

**ADV KENNEDY SC:** By how much?

**MR MLAMBO:** 15%.

**ADV KENNEDY SC:** 15%.

**MR MLAMBO:** That is correct and typically we do not even make that kind of profit in the defence industry. If  
20 you make 7% it is an excellent net profit on a contract.

**CHAIRPERSON:** So it was quite a serious financial detriment.

**MR MLAMBO:** Yes.

**CHAIRPERSON:** Prejudice to the entity.

**MR MLAMBO:** Yes, Chair, it was very serious. That is

why I believe that even if he actually told Mr Ntshepe that he was not going to do it, if he got fired or disciplined he would still have his integrity intact. In fact he would later be proved right, that he was acting in the interests of the group.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** May I just have a moment, Chair? Alright, may I just mention, Chair, at page – Chair, may I just indicate this – well, perhaps I should take the witness  
10 to it. Can I take you in your affidavit please, Mr Mlambo, to page 722. You refer in paragraph 7.1, 722 is the page.

**MR MLAMBO:** 722. Yes, I found it.

**ADV KENNEDY SC:** Yes. 7.1 and 7.2 refers to Mr Steyn saying he had received the instruction to put an MOA in place for DVS with VR Laser and he expressed his reservations and the 15% is there mentioned and then you say in 7.3:

20 “Mr Steyn further presented to me a submission which I was supposed to sign in support of the procurement decision to enter into an MOA with VR Laser Services. I rejected the submission and presented my reasons in my handwriting on the said document.”

Now you do not refer to any annexure there and I have not found any of the annexures to your affidavit, the document

you refer to here. We are dealing here, of course, with V  
...[intervenes]

**MR MLAMBO**: DVS.

**ADV KENNEDY SC**: Sorry, DVS, not the DLS that we  
were referring to earlier. Do you in fact have that  
document available to you?

**MR MLAMBO**: Unfortunately I do not have it but I had  
actually requested the investigators to request that  
document and the unfortunate thing is that I have already  
10 left Denel and I could not have access to the documents  
that I had received.

**ADV KENNEDY SC**: Alright, thank you. Chair, may we  
undertake that we will produce that for your records.

**CHAIRPERSON**: Ja.

**ADV KENNEDY SC**: To have it admitted.

**CHAIRPERSON**: Ja.

**ADV KENNEDY SC**: We just need to - it is not an  
annexure to another witness's affidavit.

**CHAIRPERSON**: Yes.

20 **ADV KENNEDY SC**: We are not quite sure at this stage.

**CHAIRPERSON**: No, that is fine and if that is found later  
he could possibly just do a supplementary affidavit and  
confirm what he knows about it.

**ADV KENNEDY SC**: We will do that, thank you Chair.

**CHAIRPERSON**: Okay.

**ADV KENNEDY SC:** What then happened with this project to award a sole supplier contract for DVS's requirements to VR Laser, that was instructed by the now Group Chief Executive Mr Ntshepe, which you were asked to approve, which you refused to approve, what then happened, was it ultimately awarded?

**MR MLAMBO:** I am not aware that it was awarded, but it is highly likely that it was awarded, because just like with the others they were awarded without my knowledge  
10 thereof.

**ADV KENNEDY SC:** Okay, but you do not have personal knowledge as to that?

**MR MLAMBO:** No, I do not.

**ADV KENNEDY SC:** Alright, thank you. Now may I now turn – leave that contractor the DVS contract to another contract which is referred to as the Chad contract in your affidavit. Tell the Chair please what was this Chad contract for?

**MR MLAMBO:** Well Denel entered into a contract with the  
20 Chad government, had to supply 40 vesper vehicles at a cost of I think around \$18.2million. What I know about the contract is that Mr Ntshepe is the one that approved the contract but it was later mentioned in one of the EXCO meetings that the approval of that contract was detrimental to Denel because it was actually below cost and it was

going to cost Denel money and there was also an issue of what we normally refer to as a technical advisor that had actually been paid but there was no evidence that the technical advisor had actually done any work for Denel.

And Denel had already been committed to deliver those 40 vehicles and what turned out was that the IP which is something that really surprised me in the motivation it was mentioned that...[intervene]

**CHAIRPERSON:** Intellectual property.

10 **MR MLAMBO:** The IP for the Casper vehicles belongs to VR Laser.

**CHAIRPERSON:** Yes, I just want for the record to confirm that when you say IP you refer to intellectual property.

**MR MLAMBO:** Intellectual property, that's right.

**CHAIRPERSON:** Okay.

**MR MLAMBO:** I was told that it belongs to VR Laser and for that reason I was requested to approve giving the work once again to VR Laser to manufacture the 40 Casper vehicles. I rejected that request on the grounds that I was  
20 convinced that the intellectual property belonged to Denel and no one could actually furnish any sound reasons as to why it was now in the hands of VR Laser. I requested proof that Denel had actually followed a due process to sell the IP to VR Laser and in my view that would have been well documented if that had happened and I also

wanted to know what were the reasons or what was the rationale behind selling the IP when there were lots of opportunities for Denel to supply Casper vehicles not just to Chad but to other countries.

And all I got was that yes it was but no proof to authenticate that yes we had sold that and one of the things that was said in the motivation was that VR Laser had undertaken at its own cost to actually make improvements to the Casper vehicles and it was for that  
10 reason that you know they ended up owning the intellectual property.

And my question was how could they do that without an order from Denel because under normal circumstances when you place an order on a company to improve a product you've paid for that improvement the IP remains yours so I did not understand why in this particular instance the IP ended up in the hands of VR Laser. So I rejected that request and in the process we learnt that VR Laser had been placed under business rescue and that  
20 actually forced us to look at our own internal capability and capacity and a decision was taken that we would do reversing the engineering in this case because we did not have the latest data pack because that if you do not have the IP you could not possibly have the latest data pack. So that was the reason and DLS motivated that another

company could actually supply some of the products because that is the chassis in particular.

The chassis had already been used successfully before according to the motivation from DLS and they submitted the letter to myself from a company called Sinotruk which is a Chinese company that letter confirmed that the accredited representative was a company known as ENNE7 and no one else could supply that chassis except that company and it was on the letterhead of  
10 Sinotruk. And on the basis of that I actually approved the designation of ENNE7 as a single source supplier because there was evidence in this particular case.

And it later turned out that there was a Bowman's report that had investigated the whole saga and found that amongst other things that were wrong that the so-called letter from Sinutruck was not authentic it was a fake letter and I had to face disciplinary action for having approved that and I went out of my way in fact once again after the event to verify the authenticity of that. I wrote to the  
20 managing director of Sinutruck and sent a copy of that letter to him and asked him whether it was an authentic letter and he confirmed in writing that it was indeed an authentic letter.

**CHAIRPERSON:** So you faced disciplinary action in regard to this one incident what about other incidents in

which other people seems to have been involved which appear to have been problematic?

**MR MLAMBO:** Well I actually saw this as a ruse or as an excuse to get me out of the way because I was a difficult person I wasn't towing the line and at that time the Group CEO was Mr Danny Du Toit because Mr Ntshepe had already left.

**CHAIRPERSON:** Oh.

**MR MLAMBO:** And I actually thought that it had  
10 something to do with some previous disagreement also relating to the award of a contract to a company an auditing company that they actually believed had to be awarded that contract. But the evaluation process did not support that and I rejected that and because I was now facing disciplinary action for having approved something that was authentic I requested a copy of that report from Bowman's and to this day I never received that report, each time I got excuses.

There are a number of emails that I exchanged with  
20 Mr Du Toit and I never got that until I enlisted the services of an attorney Mr Fisher who challenged that, requested the documentation and that never happened and Denel actually backtracked after that.

**CHAIRPERSON:** So are you saying that you were told that Bowman's had conducted an investigation and had



concluded that the letter was fake but you never actually saw the report from Bowman's.

**MR MLAMBO**: Ja, precisely Chair.

**CHAIRPERSON**: But you say you yourself had communicated with the company and sort confirmation that the letter was authentic and they had provided that confirmation.

**MR MLAMBO**: That is correct Chair.

**CHAIRPERSON**: Yes, and that was before you were  
10 dismissed or was it after you were dismissed.

**MR MLAMBO**: No, I was never dismissed.

**CHAIRPERSON**: Oh you were never dismissed.

**MR MLAMBO**: No.

**CHAIRPERSON**: Oh you resigned.

**MR MLAMBO**: What happened I actually decided to leave the company because I thought the situation was such that I could not continue working for Denel I applied for a VSP, voluntary severance package.

**CHAIRPERSON**: Yes.

20 **MR MLAMBO**: It was actually approved but after the mention of that Bowman's report I was told that it was going to be suspended pending the outcome of the disciplinary hearing. But when I sit back and thought about the circumstances that led to that it was blatantly clear as we will discuss that or we will present evidence later that

my refusal to approve the appointment of Ernst & Young actually triggered that because I based my decision on the evaluation teams report in this course. I interrogated that and I was satisfied that they were objective, impartial, fair and they did things in accordance with the requirements of the policy.

**CHAIRPERSON:** Okay, Mr Kennedy.

**ADV KENNEDY SC:** Chair, thank you. Mr Mlambo you have dealt briefly now in the last few minutes with a  
10 number of topics all of which are set out in some detail in your affidavit the Chad contract, the Bowman's report, the authenticity of the letter, your approach to – your concern about the intellectual property not being established and then also and I do not propose Chair unless you would like me to go through any of that in any detail...[intervene]

**CHAIRPERSON:** No that is fine.

**ADV KENNEDY SC:** Because I think he has covered very usefully the broad outline.

**CHAIRPERSON:** Yes.

20 **ADV KENNEDY SC:** And Mr Mlambo you confirm all your evidence in your affidavit specifically in relation to that and also the annexures that you put up in support of that?

**MR MLAMBO:** That is correct Chair.

**ADV KENNEDY SC:** The appointment of the auditors was that the appointment of Ernst & Young that is referred to in

your affidavit?

**MR MLAMBO:** Ja, Ernst & Young was not the winning bidder. The winning bidder...[intervene]

**ADV KENNEDY SC:** I am sorry yes it was Kopano was it not who was actually awarded.

**MR MLAMBO:** Ja, but Kopano was actually second on the list I do not know where the evaluation report is here it is one of the annexures.

**ADV KENNEDY SC:** Yes, but just summarise in a  
10 sentence or two if you would for the Chair's assistance.  
What was the difficulty in relation to the appointment of the  
auditors?

**MR MLAMBO:** The tender was actually for the  
appointment of an internal audit company. After the  
evaluation as per our process the evaluation team  
presented their report. I was actually quite happy with  
their report initially they had recommended that the  
company known as Nexia SAB&T something. But it turned  
out that that company had actually not disclosed some  
20 contravention, it was guilty of issuing a BBBEE certificate  
that they were not supposed to issue and the BBBEE  
Commission was involved in that. So that was a serious  
contravention and on the basis of the representation to  
myself by the acting group financial director and also in  
that report he mentioned the Chair of the audit committee

Mr Taliep Sadick that he had actually expressed concerns that evaluation team had overlooked that.

I saw the evidence and on the basis of that evidence I concurred with him that yes it was the right thing to do to disqualify that company which I did. And I said then we have to as per policy award the contract to the next best company it was Kopano and the argument that was raised after that was that they did not know Kopano it was the acting Group CFO was supported by the  
10 Group CEO and they actually claimed that even the head of the audit committee did not support the idea of Kopano being appointed because they did not know it and my argument was that you do not have to know the company.

After all the three companies are large companies and that pre-supposes that they have enough resources to execute the contract and if I look at the head count of the three companies there is no way that they would not be able to execute that contract and I said we do not actually appoint companies on the basis of who we know in those  
20 companies. I look at the evaluation report and on the basis of that I approve or reject if I find that there is any anomaly in that report. And then they raised another argument that the company in question was doing work for the Auditor General, I investigated that and even spoke to a senior manager in the Auditor General's office and that

senior manager confirmed that almost all the companies, audit firms that are in South Africa are doing work for the Auditor General and I said if that is the argument I am not going to entertain it. The award will go to Kopano as per the outcome of the evaluation process that was rejected because the Group CEO and the Group CFO were supposed to also sign as approving that.

They rejected that and ultimately the contract was cancelled but one of the things that did not happen. When  
10 you cancel a contract that was advertised on the eTender portal, the National Treasury's portal you have to furnish reasons and post on that website as to why you are cancelling that tender that was not done. But then unfortunately during that period that is the time when I left the company but a subsequently learnt that the tender was re-advertised and the outcome was in favour of Ernst & Young the company they wanted to appoint.

So it would be interesting for the evaluation process to be investigated and see whether a proper process was  
20 followed in awarding. I do not think it is a coincidence that the contract ended up going to Ernst & Young that is what they wanted to do right at the outset.

**ADV KENNEDY SC:** Thank you Chair may I just conclude these questions by asking this, had you started with Denel in 2004?

**MR MLAMBO:** That is correct Chair.

**ADV KENNEDY SC:** And you worked continuously there until you left in the circumstances that you have just outlined to the Chair.

**MR MLAMBO:** In 2019.

**ADV KENNEDY SC:** In 2019 so it was 15 years afterwards. How did you feel when you left? How did you feel about the circumstances in which you came to leave?

**MR MLAMBO:** Well it was actually sad because I had  
10 actually invested a lot of time and energy in making sure that together obviously with people who believed in the future of Denel to make sure that Denel is a viable and successful organisation. When I joined Denel I joined one of the divisions which was at the time the biggest division in the group that was known as Kentron but it was later renamed Denel Dynamics.

I did quite a lot, Denel was lost making that time it was in a dire state. My key role at that time was to implement a management systems to comply with the  
20 relevant ISO standard, ISO of 9001, 14 001 and 18 001 and there I managed to get Denel Dynamics which was the biggest division at the time to be ISO 9000 and 14 000 accredited because one of our biggest clients at the time which was Armscor it is not one to do business with companies that are not ISO certified. And the next big

project that I handled was running with development and implementation of the strategy that we dubbed voyage to excellent. And at that time Mr Wessel's was actually the CEO of Denel Dynamics and very supportive I think he did a sterling job at that time supported me and even got me to actually be part of the team that approved the appointment of key individuals in the group with a view to driving a transformation because as a high-tech organisation we employed a lot of engineers and scientist at Denel.

10           And we managed through the right interventions to get a lot of black engineers into the group and in that period the division was actually doing well people were very motivated and it was regarded as strategic. In fact, they used the term sovereign, sovereign capability which is above strategic status because there is no other company on the entire continent that has got the capability to develop missiles and UAV's and Denel Dynamics had that and in the southern hemisphere as well it was the only one that could do that.

20           So we were very proud of what we have achieved and the company started doing well financially and you know the group and with the appointment of Mr Riaz Saloogee the company did even better. I think it was during his era that Denel did exceptionally well and it was showed quite constantly with the label of the best governed

SOE because we had good governance, we were just doing well. Our processes were great and then it was actually sad to see Denel in the State it was in being unable to pay salaries most of the time, depending on tenders and we were losing a lot of critical skills because the focus had been lost, we were not focusing on the things that actually make a business to hum.

So it was actually sad to, for me to see that happening but what I am hoping to see because I still  
10 believe Denel is a very strategic and critical business not just for the State but for the country. It is important to find the right people in key positions that will turn the fortunes of Denel around. I think it is still possible they can still get back some of those lost critical skills and just get people that will focus on the things that matter in a business.

**CHAIRPERSON:** Mr Kennedy.

**ADV KENNEDY SC:** Thank you those are our questions  
Chair.

**CHAIRPERSON:** Yes, okay. Thank you very much Mr  
20 Mlambo for coming to assist the Commission we appreciate it very much and if we need you we will ask you again and I have no doubt you will come back if asked. Thank you very much.

**MR MLAMBO:** My pleasure.

**CHAIRPERSON:** Yes.



**MR MLAMBO**: Thanks for giving me the opportunity.

**CHAIRPERSON**: Thank you, you are excused.

**MR MLAMBO**: Okay.

**CHAIRPERSON**: Mr Kennedy.

**ADV KENNEDY SC**: Thank you Chair may we call our next witness.

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: May I just indicate the next witness is not the person who directed email correspondence to the  
10 Commission that was the subject of discussion earlier.

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: Now his situation will be clarified and dealt with on a later date.

**CHAIRPERSON**: Okay.

**ADV KENNEDY SC**: We propose now to call as the next witness Mr Nkosi, Mr Phumlane Nkosi who I believe is present.

**CHAIRPERSON**: Okay, alright.

**ADV KENNEDY SC**: May I ask that he then come to the  
20 witness Chair and then be sworn in?

**CHAIRPERSON**: Ja, okay they can bring him up to the witness chair. Maybe I should take a five minute's adjournment while you sort out everything.

**ADV KENNEDY SC**: As you please Chair.

**CHAIRPERSON**: Yes, we will adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Mr Kennedy.

**ADV KENNEDY SC:** Thank you Chair I confirm that our next witness who is now in the witness box is Mr Phumlane Nkosi.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** May he be sworn in please?

**CHAIRPERSON:** Before he is sworn in Mr Nkosi where is your jacket? Where is your jacket?

10 **MR NKOSI:** Oh I have – I am [Not speaking into microphone].

**CHAIRPERSON:** Hm.

**MR NKOSI:** [Not speaking into microphone].

**CHAIRPERSON:** You did not wear a jacket? You should wear a jacket when you come to a forum like this. I think somebody is going to give you a jacket. Thank you Mr Nkosi and to those who have assisted you. Now you may take the oath or affirmation.

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

20 **MR NKOSI:** Phumlane Nkosi.

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

**MR NKOSI:** No.

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

**MR NKOSI:** Yes.

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

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

**CHAIRPERSON:** Thank you; you may be seated Mr Nkosi.

**ADV KENNEDY SC:** Thank you Chair.

**CHAIRPERSON:** Yes.

10 **ADV KENNEDY SC:** Good afternoon Mr Nkosi. Mr Nkosi is it correct that you have provided at the request of the commission an affidavit which is – it should be in front of you in the bundle.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Chair for the record the bundle that I am referring to is Denel Bundle 03.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** And it is Exhibit W13.

**CHAIRPERSON:** Yes thank you.

20 **ADV KENNEDY SC:** Mr Nkosi would you please look at the document – you will see that there are various page numbers look on the top left hand side of each page you will see page numbers – do you see that Denel -03-004? You have that?

**MR NKOSI:** Correct yes.

**ADV KENNEDY SC:** For convenience we will just refer to

the number here as being 4 – we will not read out the whole thing. You confirm that this is – it is referred to as a statement but this is in fact your affidavit?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And may I take you please to page..

**CHAIRPERSON:** Please raise your voice Mr Nkosi.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And try and just look towards the Chair if you would not mind even though the questions are coming  
10 from me just so that he hears you clearly. And can I ask you please to turn to page 27.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Is that your signature above the typed Phumlane Nkosi?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And you signed that before a Commissioner of Oaths whose details and signature appear on the following page?

**MR NKOSI:** Correct.

20 **ADV KENNEDY SC:** You confirm that this in fact sets out your evidence in written form of an affidavit?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And do you – have you been through this affidavit to confirm that you are happy with the contents as being true and correct?

**MR NKOSI:** Yes correct.

**ADV KENNEDY SC:** And – right. Thank you Chair we would ask then formally for leave to have this affidavit and its annexures admitted in – as evidence of the commission Denel Bundle 03 Exhibit W13.

**CHAIRPERSON:** The statement/affidavit of Mr Phumlane Nkosi starting at page 4 of this bundle is admitted as Exhibit W13.

**ADV KENNEDY SC:** Thank you Chair. Chair I propose with  
10 your leave to go through particularly the introductory parts very briefly and to lead the witness on issues that are uncontroversial.

**CHAIRPERSON:** Yes okay.

**ADV KENNEDY SC:** Mr Nkosi you are a Mechanical Engineer is that right?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** You hold degrees of Bachelor of Science as well as an MSC in Leadership and Innovation?

**MR NKOSI:** Correct.

20 **ADV KENNEDY SC:** And then you have various other qualifications. You are employed where at the moment?

**MR NKOSI:** Armscor.

**ADV KENNEDY SC:** Armscor. And when did you start?

**MR NKOSI:** I started in 2009.

**ADV KENNEDY SC:** 2009?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Your affidavit refers to your being initially at Armscor as a trainee engineer in 2000 to 2002 and then you moved elsewhere to CSIR, is that right?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And then you joined BAE Land Systems South Africa?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Is that the entity also known sometimes  
10 as BLSSA?

**MR NKOSI:** It is the current DVS Denel Vehicle System yes.

**ADV KENNEDY SC:** The current DVS?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Yes. Previously was owned by the British Arms Group BAE but it was acquired later by Denel.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And then it is now known as DVS Denel Vehicle Systems, is that correct?

**MR NKOSI:** Correct.

20 **ADV KENNEDY SC:** So you worked there for what years?

**MR NKOSI:** From 2005 until 2009.

**ADV KENNEDY SC:** And is that when you moved then over from Denel to Armscor?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And in what capacity?

**MR NKOSI:** I was a Program Manager at Armscor.

**ADV KENNEDY SC:** Right. And then you were promoted to what position?

**MR NKOSI:** To a Team Leader.

**ADV KENNEDY SC:** Team Leader?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** For what?

**MR NKOSI:** In Program Management Support.

**ADV KENNEDY SC:** And is that the position you hold  
10 currently?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Now your affidavit if you can look at page 6 again look at the top left hand numbers. The last digit is 6 paragraph 3. You set out there your roles and responsibilities.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** As a Team Leader Program Management Support?

**MR NKOSI:** Yes.

20 **ADV KENNEDY SC:** Now I am going to just leave it on the basis that obviously the Chair has the affidavit before the commission and has the opportunity or has had the opportunity to read through all of that detail. I do not believe Chair with subject to your guidance that it is necessary for us....

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** To take him through that.

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

**ADV KENNEDY SC:** Mr Nkosi you deal in the body of your affidavit with a number of issues relating to standards that had to be met and RSA Mil – M-i-l standard 37. You deal with a number of tests that are referred to as TP2 and TP3 tests. Before we get into that just explain your role as an Armscor Official in this particular job that you hold now what  
10 role if any do you have to play in relation to testing arms – items of arms or components of arms and weapons?

**MR NKOSI:** Yes. I am a blast specialist what was then referred to as a RSM new standard officer. That entails basically ensuring that all the vehicles that go to the SANDF are properly tested and certified.

**ADV KENNEDY SC:** Yes. Now you refer in your affidavits and again we will get into the detail in a moment to a need for tests to be done for certain items relating to the Hoefyster contract.

20 **MR NKOSI:** Correct.

**ADV KENNEDY SC:** You confirm that?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Right and what were those items?

**MR NKOSI:** Basically before the vehicle can be issued to SANDF according to the RSM Mil standard that is a clearly



specified – it has to be [intervention]

**ADV KENNEDY SC:** Yes I am asking sorry to interrupt.

What items are we talking about?

**MR NKOSI:** It is – it is the vehicle itself.

**ADV KENNEDY SC:** The vehicles?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** These are armoured vehicles?

**MR NKOSI:** Armoured vehicles yes.

**ADV KENNEDY SC:** Under the Hoefyster contract?

10 **MR NKOSI:** Yes.

**ADV KENNEDY SC:** And were these being purchased by Armscor from Denel?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And Armscor would supply whom with those armoured vehicles?

**MR NKOSI:** SANDF.

**ADV KENNEDY SC:** SANDF?

**MR NKOSI:** Yes.

20 **ADV KENNEDY SC:** Right. And is it Armscor's function to test the vehicles for something specific?

**MR NKOSI:** It is Armscor's function to test that before it is given to the SANDF.

**ADV KENNEDY SC:** Can Denel or its divisions or entities do their own testing or do you – are – is Armscor ultimately responsible?

**MR NKOSI**: Armscor is ultimately responsible they are the National Authority.

**ADV KENNEDY SC**: Right. Now again Chair subject to your guidance I am going to be very brief in trying to get the witness to explain.

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: In very layman's terms lay person terms.

**CHAIRPERSON**: Ja.

10 **ADV KENNEDY SC**: Some technical issues and Mr Nkosi can you just please bear in mind that we are – we are on the legal side rather than the mechanical engineering side so please assist us in our – certainly in my ignorance on technical aspects such as this. Were you in your capacity that you have described personally responsible for testing these armoured vehicles in relation to the Hoefyster contract or at least ensuring that proper tests were done?

**MR NKOSI**: I only became responsible from 2011. The tests happened in 2005 as per CV has indicated that I was at  
20 CSIR at the time.

**ADV KENNEDY SC**: Yes. So long before you joined there were certain tests that were done?

**MR NKOSI**: Correct.

**ADV KENNEDY SC**: And you have indicated in your affidavit concerns about the adequacy or the correctness of the tests

that were done.

**MR NKOSI**: Correct.

**ADV KENNEDY SC**: And were they specifically done on armoured vehicles that were being manufactured as part of the Hoefyster Project?

**MR NKOSI**: Correct.

**ADV KENNEDY SC**: Thank you. How many tests were done – are you aware of in 2005?

**MR NKOSI**: In 2005 there were three tests that were done.

10 **ADV KENNEDY SC**: Three tests?

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: Okay. And your affidavit refers to a Mr Frans Beetge.

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: Who was he or is he?

**MR NKOSI**: Frans Beetge is the – is the previous incumbent of the position that I am currently holding now.

**ADV KENNEDY SC**: So you replaced him?

**MR NKOSI**: Yes I replaced him.

20 **ADV KENNEDY SC**: In what year?

**MR NKOSI**: Basically I was his understudy from 2011 basically getting all the background information for his work because it is a critical skill and a critical work as specified by Armscor and hence it is not a work that can be – you need time just to get a ground until you get acquainted with the

work.

**ADV KENNEDY SC:** Yes I understand what understudy means. Now Mr Beetge you have recorded in your affidavit has sadly passed away.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Did – and – when he left the employ of Armscor how did he leave the employ of Armscor?

**MR NKOSI:** Ja unfortunately he was ill – he could not carry on anymore I think he retired just before – before turning 65.

10 He must have been around 62.

**ADV KENNEDY SC:** Right.

**MR NKOSI:** So he felt he needs to spend enough time with his family.

**ADV KENNEDY SC:** Okay. Now Mr Nkosi was he the person occupying the position you later took over at the time of the tests – the three tests that you have referred to as having been done in 2005?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And did he – did he convey to you  
20 information about what tests have been done?

**MR NKOSI:** Yes he conveyed and provided all the evidence on all the tests that were done.

**ADV KENNEDY SC:** Did he provide you with documentation in that regard?

**MR NKOSI:** Yes I have documentation, I have videos, I have

files and the pictures basically.

**ADV KENNEDY SC:** Alright thank you. Now you refer in your affidavit to a standard that is referred to as RSA-Mil standard 37 if I can take you to page 8.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Your paragraph 4 has a heading Summary of the RSA-Mil standard 37 issue 3. Now am I right in understanding Mil there means military?

**MR NKOSI:** Correct.

10 **ADV KENNEDY SC:** Okay. Now can you just very, very briefly Mr Nkosi I do not want you to go into considerable technical detail but can you just explain to us in a sentence or two what the standard is, who lays it down, what is its purpose?

**MR NKOSI:** The standard's purpose is to ensure that the vehicle that ultimately goes to service by the SANDF has been properly tested as it involves basically those vehicles are subject – could be subjected to landmines in the area of operation. So basically that – that standard lays down on all  
20 the processes that one has to follow until the vehicle can be issues to the SANDF.

**ADV KENNEDY SC:** Right. So is the – is the main object of a test to ensure that the vehicle has sufficient protection against the damage that might be caused if the vehicle came into contact with an explosive device such as a landmine?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Right. Now you refer in your affidavit to two tests. You refer to them as test piece 2 or TP2 and I am going to use the abbreviation and test piece 3.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** TP2 and TP3. Were they tests that were part of this RSA-Mil standard 37 issue 3?

**MR NKOSI:** Yes they are part of that. There is also a TP1 a test plate 1 whereby it is just the preliminary stage of the whole process.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** So – so basically they are part of that standard test.

**ADV KENNEDY SC:** Do you have any issue with any test relating to these vehicles in the Hoefyster Project that relate to the TP1 test?

**MR NKOSI:** TP1 test is basically a test plates that you still sort of like trying to find out scientific evidence or maybe the vehicle can [00:15:30] sustain and survive any landmines or something like that. The critical ones are actually the TP2 and TP3.

**ADV KENNEDY SC:** TP2 and TP3.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** And is that is why have dealt with those in your affidavit rather than TP1?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Okay. Now what is the – what specifically does TP2 test seek to test as compared with TP3? Again very briefly from a technical point of view. What is TP2 test?

**MR NKOSI:** A TP2 test basically it is the critical test whereby if there are bidders on a particular contract of supplying armoured vehicles. It is an entry test whereby you actually trying to ensure that the vehicle that you are going  
10 to accept has a minimum structural integrity to be able to be considered for – for the contract.

**ADV KENNEDY SC:** Right.

**MR NKOSI:** Yes. So basically the understanding is that the vehicle is not being properly developed yet because it is still a bidding phase.

**ADV KENNEDY SC:** Right.

**MR NKOSI:** Ja.

**ADV KENNEDY SC:** Sorry did the Chair – I think the Chair wants to ask something.

20 **CHAIRPERSON:** Yes, yes, ja.

**ADV KENNEDY SC:** Thank you may I proceed? Thank you. May I just ask Mr Nkosi page 10 paragraph 4.6 until 4.9 on the following page. Does that set out in more technical terms the different elements of the TP2 test?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Thank you. And have you employed the same approach in relation to the TP3 test the details are set out in paragraph 5 page 11 to 12?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Just explain to us though in layman's terms TP3 test how does that compare with the TP2 test?

**MR NKOSI:** The TP3 test it is after you have basically had a confidence that the vehicle has the bare minimum requirements. The TP3 test is the final test now whereby the  
10 design has been fully developed. So it is – you can then test but having a TP2 test actually prevents an issue whereby you go to a TP3 and there are issues. So the TP3 test is the final test basically.

**ADV KENNEDY SC:** The final one.

**MR NKOSI:** The manufacturing base line has been reached. Just before you begin to manufacture it has to pass a TP3 test.

**ADV KENNEDY SC:** Right. So before you get to a TP3 test you must have passed the TP2 test?

20 **MR NKOSI:** Correct.

**ADV KENNEDY SC:** Right. And once you have passed that then you can be considered further for the project but that is subject to a TP3 test being passed?

**MR NKOSI:** Yes. The understanding is there is still some development issues that still have to be tackled but by and



large you have – you have met the basic requirements.

**ADV KENNEDY SC:** Right.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** Now is it possible to supply to the end user in this case the South African National Defence Force who will then allocate human beings to sit in these armoured vehicles. Is it possible to supply to the SANDF an armoured vehicle which has not passed the TP2 and then the TP3 test?

**MR NKOSI:** Not according to the RSM-Mil standard.

10 **ADV KENNEDY SC:** Right. And what would the consequence be if there was not a proper test conducted at the TP2 stage and the TP3 stage and that these were passed fully?

**MR NKOSI:** The consequences are quite severe. One could be – can be death of the soldiers, [00:19:04], injuries, basically ja. Those are the main things – and loss of lives.

**ADV KENNEDY SC:** Would that be because just correct me if I am wrong and my layman's understanding. The TP2 and the TP3 tests are there to ensure that the vehicle – the  
20 armoured vehicle is sufficiently compliant with requirements to try and minimise damage to vehicles and destruction or injury – sorry destruction of vehicles or injury to humans or their deaths

**MR NKOSI:** Correct. If I may further elaborate. Basically if you having all those tests you have evidence that you have

done basically – all the necessary things just to ensure that the soldiers are safe. For future legal ramifications if there could be loss of lives you know that you could actually refer them back to all those tests results and tests data that you obtained to show that you have actually done proper engineering judgment.

**ADV KENNEDY SC:** Yes. Right now let us get to your involvement in relation to reviewing information regarding the landmine tests. You deal with that in your affidavit from  
10 page 12 paragraph 6, correct? And so you have already testified that the two tests in question were done in 2005.

**MR NKOSI:** Three tests.

**ADV KENNEDY SC:** Sorry three tests I beg your pardon correct. In 2005 many years before you even joined. So you were not involved in those tests but what was your involvement in relation to those tests? Your affidavit refers to your discussions with Mr Beetge who had been involved in the tests and were you required then as your heading suggests paragraph 6 to reviewing information relating to  
20 two tests in question?

**MR NKOSI:** Yes basically I had to review the information and look at the data just to acquaint myself with the work as it was on-going at the time.

**ADV KENNEDY SC:** Right. And from the information you obtained from Mr Beetge presumably both what he said and

what he provided in the form the documentary evidence that you refer to were you able to satisfy yourself that a test had been conducted for TP2? Let us leave aside whether it was a proper test – whether it was passed or not. Had there been an attempt to undergo a TP2 test for the vehicles in question?

**MR NKOSI:** Yes basically there has been – there is evidence that tests were conducted for a TP2 test.

**ADV KENNEDY SC:** For TP2 tests?

10 **MR NKOSI:** Yes.

**ADV KENNEDY SC:** Did you say?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Sorry I just did not hear you. And what about the TP3 test was that done?

**MR NKOSI:** No it was not done. It was not done.

**CHAIRPERSON:** We are at one o'clock Mr Kennedy.

**ADV KENNEDY SC:** Thank you Chair would this be a convenient time?

20 **CHAIRPERSON:** Shall we take the lunch adjournment until two?

**ADV KENNEDY SC:** Thank you.

**CHAIRPERSON:** Okay we will take the lunch adjournment we will resume at two o'clock. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Okay let us continue.

**ADV KENNEDY SC:** Thank you, Chair. Mr Nkosi, we were dealing with some backgrounds ...[intervenes]

**MR NKOSI:** Sorry. Sorry, Chair. Just water, please?

**ADV KENNEDY SC:** Sorry?

**MR NKOSI:** Water.

**ADV KENNEDY SC:** Water?

**MR NKOSI:** Yes.

10 **ADV KENNEDY SC:** Can someone help with water?

**CHAIRPERSON:** Oh, somebody must just organise water for him.

**ADV KENNEDY SC:** Now Mr Nkosi, you have explained to the Chair before we took the adjournment about the difference about the TP2 and TP3 tests, both of which had to be passed.

And particularly the TP3 test as being the ultimate test before products could be supplied to the end user. In this case, the SANDF.

20 Now you have referred to a number of tests that were done before you started in your current... in your position, taking over from Mr Beetge.

What, in very broad outline, did you discover? How many tests were conducted for TP2 in 2005?

**MR NKOSI:** Okay. I will repeat again. It is three tests that

are conducted for TP2 tests, three tests.

**ADV KENNEDY SC:** Right.

**MR NKOSI:** There were two sets of tests that were done. One done by the auspices of Armscor. The other one done by LMT on their own accord.

**ADV KENNEDY SC:** With who?

**MR NKOSI:** With CSIR.

**ADV KENNEDY SC:** The CSIR?

**MR NKOSI:** Yes.

10 **ADV KENNEDY SC:** Which came first?

**MR NKOSI:** The one that was conducted by Armscor.

**ADV KENNEDY SC:** By Armscor?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** And ordinarily, would Armscor conduct these tests itself?

**MR NKOSI:** We conduct it together with CSIR as they are our technology partner but it is important for Armscor to be there so that they keep a record of the hull configuration amongst other things.

20 **ADV KENNEDY SC:** Yes. You mentioned in your affidavit, you have touched on this earlier, that in Armscor, in fact, has a legal authority, a legal status in relation to the certification of arms components or items such as this. Is it in fact as the statutory authority, the legal authority to pursue?

**MR NKOSI:** I am not sure about that but it is Armscor's task

as responsibility. I am not sure as in terms of the statutory requirements. But it is their... they are obliged to do so.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** And then there were two... so there were two processes that you have just reminded us of in 2005, had three tests done. Is that right?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And was any TP3 tests done in 2005?

10 **MR NKOSI:** No, they would not have done that because at the time the baseline had not been finalised. So it is a... it was just an entry test.

**ADV KENNEDY SC:** Just explain to the Chair what a baseline is, please?

**MR NKOSI:** Basically, again, it is a entry test so that Armscor makes a due diligence to make sure that if some modifications are happening to like the baton(?), then you would have done max the bare minimum requirements.

20 The bare minimum requirements test, with the understanding that – because we wanted additional things on the hull. There will be additional things that are still going to be finalised for the process, for the procurement of that.

**ADV KENNEDY SC:** And did you discuss with Mr Beetge what the outcome of the first test was in 2005?

**MR NKOSI:** Yes, I discussed with him the outcome of that.

And he basically told me everything that he had to.

**ADV KENNEDY SC:** Is it?

**MR NKOSI:** Yes, that he had.

**ADV KENNEDY SC:** Okay. What was ...[intervenes]

**CHAIRPERSON:** I am sorry. He informed you of...?

**MR NKOSI:** Ja, he informed me of everything else and all the intricacies that were involved in the projects and some of his misgivings as well.

**ADV KENNEDY SC:** Okay. Well, we will get to that If you  
10 can just ...[intervenes]

**CHAIRPERSON:** Do not be too far from the mic but do not be too close either.

**MR NKOSI:** Okay.

**CHAIRPERSON:** Okay. [laughing]

**ADV KENNEDY SC:** And if you could please just try and remember. I know it is difficult but try and look towards the Deputy Chief Justice, the Chair rather than me even though I am giving most of the questions.

**MR NKOSI:** Okay.

20 **ADV KENNEDY SC:** Because it will be easier for the Chair then to hear and it will also pick up on your microphone in that direction.

**MR NKOSI:** Okay.

**ADV KENNEDY SC:** Okay. So what was the outcome of the first test? Did the vehicles... These are called Patria

vehicles, is that right?

**MR NKOSI**: Correct, sir.

**ADV KENNEDY SC**: Did those Patria vehicles, in fact, passed or failed the first test?

**MR NKOSI**: Let us start with the first test. It is a wheel-short-test. They passed the wheel-short-test.

**ADV KENNEDY SC**: Is it correct that there are different elements to the tests?

**MR NKOSI**: Yes, there are different elements that those  
10 tests actually entail.

**ADV KENNEDY SC**: Okay. So ...[intervenes]

**MR NKOSI**: Ja, it depends on the complexity of the vehicle that is being tested.

**ADV KENNEDY SC**: Yes. And you deal with this in some detail in your affidavit which the Chair will be able to go through. Can you just confirm? So some of the elements of the first TP2 tests that these vehicles were subjected to, some of those have passed and others not.

**MR NKOSI**: Yes, it is a series of tests, basically.

20 **ADV KENNEDY SC**: Okay.

**MR NKOSI**: Yes, h'm.

**ADV KENNEDY SC**: So what was the overall outcome of the test itself ...[intervenes]

**MR NKOSI**: The overall outcome. The first test, it was a wheel-short-test. Generally, by enlarge, with my experience



with the tests, the wheel-test generally passed because it shows you...

It sorts of like simulates one the ...[indistinct] that will hit a landmine with the front tyres or the rear tyres. So basically because of the... it passes generally but the most important test that fail is the hull shot.

**ADV KENNEDY SC**: So it failed the hull...?

**MR NKOSI**: The hull shot.

**ADV KENNEDY SC**: Hull shot?

10 **MR NKOSI**: Yes. Basically, where the occupants sit at the back.

**ADV KENNEDY SC**: Alright.

**MR NKOSI**: Ja.

**ADV KENNEDY SC**: And how important is that as an element?

**MR NKOSI**: Well ...[intervenes]

**ADV KENNEDY SC**: What is the significance if you fail that particular element of the TP2 test?

20 **MR NKOSI**: Basically, we get human readings on the... We put a dummies. From pics. Just devices on that, the dummies. And we basically get a threshold values with...

Threshold values from international literature and studies that have actually show that if it was a human who sits on that vehicle, if it is above a certain threshold, then they will either pass...

They will either die or being amputated, basically. In just simple terms. But the hull test failed because the readings were just a bit too high.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Now ...[intervenes]

**CHAIRPERSON:** Come closer to the mic again.

**MR NKOSI:** Okay.

**CHAIRPERSON:** You are too far. So you say it would affect  
10 people sitting at the back.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** What about people sitting in the front? They would not be affected?

**MR NKOSI:** It depends. When we... That is why it is important for Armscor to be involved at the... on the test because we are an independent body with an interest of the SANDF at heart. We look at the vehicle to see where... which area is likely to actually cause damage. That is where we put the landmines, basically. We look at the worst case  
20 scenario.

**CHAIRPERSON:** What I am trying to find out. You know, when you talk about the people at the back, one supposes that at the back, there could be people at the front.

**MR NKOSI:** Yes, the drivers.

**CHAIRPERSON:** Yes.

**MR NKOSI**: There is normally a driver and there is normally the crew commander. There is people operating the vehicle as well.

**CHAIRPERSON**: Yes.

**MR NKOSI**: And ...[intervenes]

**CHAIRPERSON**: But does it mean that they would be safe?

**MR NKOSI**: It does not mean that they will be safe but we have to take the ...[intervenes]

**CHAIRPERSON**: Ja, chances of being injured are... there  
10 are less chances of them being injured compared to those who sit at the back.

**MR NKOSI**: Basically, we look... we could either put it at where the drivers are because the landmine can actually explode... In actual sense, we should be testing all the areas where people are sitting, just to be sure.

**CHAIRPERSON**: Yes.

**MR NKOSI**: Yes, basically, on this particular test, according to my predecessor, they actually intended to look at various critical positions because of the nature of the vehicle and the  
20 complexity of the vehicle.

Because we include the tarot as well where human lives sit as well. But because we... it is just on the second test, it just failed the hull test. But the intention was to look at other strategic positions within the vehicle to see if it passes or not.

**CHAIRPERSON**: H'm. If it fails, one ...[intervenes]

**MR NKOSI**: Yes.

**CHAIRPERSON**: ...just like four people at the back. Do you then have to take it back and they look at everything including people who would sit in the vehicle and in the front?

**MR NKOSI**: Yes.

**CHAIRPERSON**: So in other words, you do not have to do all because ...[intervenes]

10 **MR NKOSI**: Depending ...[intervenes]

**CHAIRPERSON**: ...one is enough.

**MR NKOSI**: If you are failing in one, it is enough.

**CHAIRPERSON**: Okay.

**MR NKOSI**: because all the lives on the vehicle matters.

**CHAIRPERSON**: Okay.

**MR NKOSI**: Only one is enough. So it would mean that, basically, the potential bidder ...[intervenes]

**CHAIRPERSON**: Ja.

20 **MR NKOSI**: ...will have to go back to... going back to the drawing board.

**CHAIRPERSON**: Ja.

**MR NKOSI**: Go back to the tricky one and do simulations again and do their own test outside of our test before coming back to us again with confidence with the ...[indistinct], basically.

**CHAIRPERSON**: But wait. In terms of which one you test whether it is people at the back or in the front, is it like a sample? You just take anyone ...[intervenes]

**MR NKOSI**: No, but ...[intervenes]

**CHAIRPERSON**: The manufacturers never know whether you test people in the front or people in the middle. You just take anyone. And if it fails, that is it.

**MR NKOSI**: Yes, that is why it is important for Armscor to be the people who choose that because you do not want a  
10 situation whereby maybe potential... be it the particular area, knowing very well that you will be testing that.

So it is a decision by the national authority. Armscor together with the CSIR would sit and look at the critical part within the specific vehicle. At which point can they actually hit.

**CHAIRPERSON**: Okay. Thank you. Thank you, Mr Kennedy.

**ADV KENNEDY SC**: Thank you, Chair. And did Mr Beetge discuss this problem with the very first test that he had been  
20 involved in with you when you were... when he was handing over to you?

**MR NKOSI**: Yes, he discussed everything. I saw the footage. The beauty of it... That is why if it is under the auspices of Armscor, we are... we have Armscor quality as well which is a critical division within our Armscor as well

that that offers independent quality check of the vehicle.

You need to check the baseline of the vehicle, the drawings. Sometimes actually you need to measure. You need to measure the weight of the vehicle. You need to go and take pictures of all the angles.

Wherever you can so that you can put it on your requisite for any possible ramification that had come after in years to show that you have done... you have taken pictures, you have done, you weighed the vehicle, this is the correct  
10 baseline and everything like that.

**ADV KENNEDY SC:** Now you refer in your affidavit to a report which came from the CSIR documenting the requirements of Armscor from the test. This is the... I just want to confirm. Yes, that is the first test. This is in your affidavit, page 15. If you look at the top left numbers, 15.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Paragraph 8.2.

**MR NKOSI:** 15, 8.2. Yes.

**ADV KENNEDY SC:** You refer to the report referring to LMT  
20 and not Patria as the provider of the item to be tested. Do you know... Can you explain that?

**MR NKOSI:** Basically, the vehicle was provided to us by LMT. I guess maybe the relationship with Patria, that I am not party to ...[intervenes]

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** ... a sample was provided to us by LMT.

**ADV KENNEDY SC:** And then you refer to an executive summary of the report in 8.4.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** The third line of 8.4.

“The test team passed the wheel-test but failed the hull-test due to great than thresholds.”

What is the... the ...[indistinct] forces.

10 “This objects prevailing the interior of assessed item and penetration of the hull by the blast.”

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** So was this your understanding of the reason why it failed this test?

**MR NKOSI:** Yes. Yes, it is basically, is that. Just, if you look at 8.5, the test was actually classified as catastrophic.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** Because there was fire(?) inside the vehicle. The hull ruptured actually.

**ADV KENNEDY SC:** Alright.

20 **MR NKOSI:** So it means that if it was a human being that was there, it would have been the end of their lives.

**ADV KENNEDY SC:** The end of ...[intervenes]

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Let me just have a moment to clarify something, please Chair.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** May I take you please Mr Nkosi to page 254? Sorry, 255.

**MR NKOSI:** 255?

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** Where is the page?

**ADV KENNEDY SC:** Do you have it?

**MR NKOSI:** 255, where is the page?

**ADV KENNEDY SC:** Please turn to page 255.

10 **MR NKOSI:** I have... okay, 255. Okay thank you.

**ADV KENNEDY SC:** Please just go to the page number I have given you.

**MR NKOSI:** 255, okay. Yes.

**ADV KENNEDY SC:** Is this the CSIR report that you are referring to which was done for the first test with Armscor?

**MR NKOSI:** I just have to look at the document itself. This is not the one here. I think this is the second one that was done by CSIR.

**ADV KENNEDY SC:** Is that the second test?

20 **MR NKOSI:** That is the third test.

**ADV KENNEDY SC:** That is the third test?

**MR NKOSI:** Yes. This is the one that was requested by LMT on their own accord.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** ....to by the CSIR.



**ADV KENNEDY SC:** Yes, but you filed the various reports in your... as part of your annexures to your affidavit, not so?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Okay. Sorry about the wrong reference, Chair.

**CHAIRPERSON:** [No audible reply]

**ADV KENNEDY SC:** Right. Then the... You then deal with a second test also conducted in 2005 on these vehicles, correct?

10 **MR NKOSI:** Let us be specific. It is the third test because there are two tests that they ...[intervenes]

**ADV KENNEDY SC:** That is the third.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** But we know that it is not the first.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** You have clarified that.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Thank you. May I just take you back to your evidence so that we do not jump ahead to the third test.

20 Let us get back to the end of the first test. That was a catastrophic failure.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** As you put it. Now then there was a second test and that you deal with on page 16, your paragraph 9.

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: Again, it was conducted in 2005 long before you joined?

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: And what was the outcome... Sorry. Who submitted the vehicles for the second test?

**MR NKOSI**: Because they failed the Armscor test, LMT on their own accord.

**ADV KENNEDY SC**: It was LMT?

10 **MR NKOSI**: Yes, on their own accord, they fixed the vehicle, basically. They retro-fitted the vehicle that failed and they moved to the ...[intervenes]

**ADV KENNEDY SC**: Just speak up, please. And try to look towards the Chair.

**MR NKOSI**: Yes, yes. They basically removed... they retro-fitted the vehicle. They removed the part that was blown apart. And apparently increased the thickness of the hull and went back to the CSIR to basically test the vehicle on their own accord without Armscor's presence in terms of  
20 verifying the baseline, looking at the vehicle, taking the masses, as it is a requirement by the standard.

**ADV KENNEDY SC**: So the question was, who sent it for a test? The answer is LMT did.

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: And but did not involve Armscor?

**MR NKOSI**: Correct.

**ADV KENNEDY SC**: Should it have involved Armscor?

**MR NKOSI**: Yes, according to the standard, they have to involve Armscor because as we stand currently, Armscor does not even have the correct baseline of this particular vehicle that was tested.

**ADV KENNEDY SC**: Now where the first test that resulted in a catastrophic failure, you indicate in your affidavit, paragraph 9.2 ...[intervenes]

10 **MR NKOSI**: Yes.

**ADV KENNEDY SC**: ...that the... It is not documented why the Patria vehicle was allowed to undergo the second test after there was a catastrophic failure of the first test. Why is that?

**MR NKOSI**: Yes, I do not know why... why was this... does LMT allow ...[indistinct] on the test. Maybe it was before my time. I am not sure about that.

**ADV KENNEDY SC**: Okay you do not know. It was not explained there.

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

**ADV KENNEDY SC**: But if I were to submit a vehicle for the TP2 test and it results in a catastrophic failure, does that mean I have to close down that business? I can never carry on. I can never improve or correct it?

**MR NKOSI**: I am not sure on the contractual conditions but

on the documents that I have seen on the critical criteria, on the documents that I have seen, it means that the company has actually failed. They need to restart again or maybe the whole process to actually restart again.

**ADV KENNEDY SC:** Okay. Now what was the outcome of that second test?

**MR NKOSI:** Yes, the second test. Unfortunate to have someone who was part of the rest, who was... he was a ...[indistinct] at the CSIR who was part of it. They passed  
10 the test.

**ADV KENNEDY SC:** And from your study of the documents, was it appropriate that they passed the test?

**MR NKOSI:** Not according to France and not according to the CSIR because they have provided them with the specimen that was not even documented or recorded or weighed or even established on the adequacy of that particular test item that was on the vehicle, to present it.

But with the CSIR, they have clearly stated that if you provide... if you bring the vehicle to them and say test, they  
20 would test scientifically and according to the RMS Standard.

But they are not sure on whatever thing that you provided because they did not really spend time with the vehicle, look at the data fact, what changes were made.

Because if it fails, like the Armscor test, they are supposed to go back to do the TSP1, provide the simulation

results to show that now they are ready again to test, provide the engineering test which is what the second... the third test was supposed to be.

It is an engineering test just for them to get confidence again so that they can resume that they have actually failed.

**ADV KENNEDY SC:** Okay. And then in 9.3 you say:

“The engineering test was subsequently interpreted to be a TP2 by Armscor.”

**MR NKOSI:** Yes.

10 **ADV KENNEDY SC:** Who in Armscor interpreted the outcome of this test to be a TP2 test?

**MR NKOSI:** It was my predecessor.

**ADV KENNEDY SC:** Your... Is that Mr Beetge?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Okay. Did he raise any concerns about the outcome of this thing?

**MR NKOSI:** Yes, he actually raised so many concerns because from 2009 up to now, you could see that there was quite a lot of the movement because once they realised that  
20 this test was actually not correctly done according to like RMS Standards.

So they tried to apply it in all the hulls that are missing on that test so that it might look legitimate on an eye that does not delve on the details of it yet.

**ADV KENNEDY SC:** Now ...[intervenes]

**CHAIRPERSON**: I am sorry.

**MR NKOSI**: Yes, Chair.

**CHAIRPERSON**: Does it say that they tried to criticise the test?

**MR NKOSI**: No, no, no. Basically, after realising the inadequacies of this particular test that passed, there was later attempts to try and legitimise the hull operation by doing other additional simulation tests, basically.

**CHAIRPERSON**: Okay.

10 **MR NKOSI**: On the vehicle.

**CHAIRPERSON**: Now you say the inadequacies of the test.

**MR NKOSI**: Yes, inadequacies.

**CHAIRPERSON**: Now that might mean the test was flawed not the vehicles.

**MR NKOSI**: Yes the ...[intervenes]

**CHAIRPERSON**: Was it the test that had flaws or the test was fine by the vehicles were not manufactured according to the required standard. That is why they failed the test.

20 **MR NKOSI**: Basically, if you do the test, there are many components on the test. You look at flying objects. As you can... If I can take you back to 8.4.2. On the test ...[intervenes]

**CHAIRPERSON**: Eight point four...?

**MR NKOSI**: 8.4.2.

**CHAIRPERSON**: Yes.

**MR NKOSI**: Yes, basically, inside the vehicle, there are objects that once the vehicle is subjected to a landmine-test, they fly around. Those are critical ...[intervenes]

**CHAIRPERSON**: Oh, okay.

**MR NKOSI**: They can never remain ...[intervenes]

**CHAIRPERSON**: Okay, okay.

**MR NKOSI**: ...or skewer the people inside the vehicle.

**CHAIRPERSON**: Okay.

**MR NKOSI**: All those particular items were removed on that  
10 test. Yes.

**CHAIRPERSON**: Okay. Now I understand. Thank you.

**ADV KENNEDY SC**: Thank you, Chair. So am I right in saying that in understanding that the TP2 test involves a number of elements?

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: And are you saying that some of those elements were not even tested?

**MR NKOSI**: They were not even tested.

**ADV KENNEDY SC**: They were not even tested in the  
20 CSIR. So they did some but not others?

**MR NKOSI**: Yes, they did some but not the others.

**ADV KENNEDY SC**: Now you set out a number of technical issues from 9.3.1 ...[intervenes]

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: ...to 9.3.21.

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: As being discrepancies that were identified.

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: What are those discrepancies? Does that refer to elements of the test not even being tested?

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: Is that right?

**MR NKOSI**: Yes.

10 **ADV KENNEDY SC**: So in other words, the test was...  
There was a test done but it was not a comprehensive test.  
They only tested for a few things.

**MR NKOSI**: Yes, basically ...[intervenes]

**ADV KENNEDY SC**: And whatever ...[intervenes]

**MR NKOSI**: Just that whatever thing that they  
...[intervenes]

**ADV KENNEDY SC**: Okay.

**MR NKOSI**: ...they requested them to test.

**ADV KENNEDY SC**: Yes. Now as a result of that test, was  
20 any certificate issued by Armscor?

**MR NKOSI**: Yes, unfortunately, the certificate was issued  
by Armscor.

**ADV KENNEDY SC**: Even though that they should not have  
been bypassed by LMT going directly to CSIR?

**MR NKOSI**: Yes. How they did it, I do not know.



**ADV KENNEDY SC:** And even though, also, the test by CSIR was not a comprehensive test and many of the elements were not even tested?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Okay.

**CHAIRPERSON:** Is the position that Armscor issued the certificates on the strength of the test done by the CSIR or did they also do the test or supervised the test and ...[intervenes]

10 **MR NKOSI:** No, they were actually invited as guests.

**CHAIRPERSON:** Yes.

**MR NKOSI:** Yes, they were there as guests.

**CHAIRPERSON:** Not to oversight?

**MR NKOSI:** Not to oversight. To actually see the whole process. Because what normally happens before the test. You actually go to the premises of the vehicle, the manufacturer, you... the exchanged document, the data packs. You have sent the data packs. You weigh the vehicle. You take pictures just as evidence. As evidence.

20 That is critical in the whole process.

**CHAIRPERSON:** H'm.

**MR NKOSI:** Yes.

**CHAIRPERSON:** H'm, h'm. They did not do this, that here?

**MR NKOSI:** No, no. They might have done it with the CSIR, I am not sure.

**CHAIRPERSON**: Okay.

**MR NKOSI**: But Armscor, currently ...[intervenes]

**CHAIRPERSON**: Armscor did not do it?

**MR NKOSI**: Armscor, currently, does not have that evidence.

**CHAIRPERSON**: Oh.

**MR NKOSI**: What vehicle was actually tested. Because on the CSIR report it was evident that basically what happened was. They basically took the vehicle that was blown  
10 catastrophically and basically cut a section that was torn apart and retro-fitted a thicker...

And took the vehicle back again to the test with the tarot baskets that have actually ...[indistinct] after the first test. I am... I wish, maybe, you could have actually be exposed to the pictures that actually happened on that test.

**CHAIRPERSON**: Yes.

**MR NKOSI**: So you can see how catastrophically the test was.

**CHAIRPERSON**: Yes, yes.

20 **MR NKOSI**: So basically it was just ...[intervenes]

**CHAIRPERSON**: It sounds like a cut and paste job.

**MR NKOSI**: Cut and paste job, like... Honestly, it was a cut and paste job.

**CHAIRPERSON**: Yes.

**MR NKOSI**: I would not want to further describe it.

**CHAIRPERSON**: Yes.

**MR NKOSI**: But it does not follow engineering principles.

**CHAIRPERSON**: Yes.

**MR NKOSI**: Yes.

**CHAIRPERSON**: Okay.

**ADV KENNEDY SC**: Can I ask you to turn in the bundle to page 46?

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: Just have a quick glance at that  
10 document and just confirm. I want you to indicate whether you are able to tell us whether this was the CSIR report for the first test or the second test or anything else.

**MR NKOSI**: Okay. Page 46, basically, before the tests were taken, LMT or Armscor rather. Armscor requested CSIR...

**ADV KENNEDY SC**: Yes?

**MR NKOSI**: Apologies. Armscor requested the CSIR to do a theoretically evaluation of the specimen before the test that happened, the first two tests that happened.

20 **ADV KENNEDY SC**: So this was before the first two tests?

**MR NKOSI**: Yes, yes.

**ADV KENNEDY SC**: So this was not the first test?

**MR NKOSI**: Yes.

**ADV KENNEDY SC**: And maybe if I can ask you please to turn to page 138?

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

**ADV KENNEDY SC:** That also seems to be a CSIR report.

**CHAIRPERSON:** Did you say 138?

**ADV KENNEDY SC:** 138. Yes, Chair.

**CHAIRPERSON:** H'm.

**ADV KENNEDY SC:** This one is dated the 14<sup>th</sup> of June 2005 which is a little after the other test we just looked at.

**MR NKOSI:** 138, yes.

**ADV KENNEDY SC:** Yes. Is this the test report for the first  
10 or the second test that you referred us to, the TP2 test?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Or ...[intervenes]

**MR NKOSI:** This is the... If I look at it, if you can look carefully, approved by... It is important to have an Armscor signature there. There is a ...[indistinct] Unfortunately, this one is unsigned but I can actually get you a copy of the signed one. This should be the tests results of the first two tests that actually happened that were under the auspices of Armscor.

20 **ADV KENNEDY SC:** Of the first test?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Right. And if I can ask you now please to turn to page 255?

**MR NKOSI:** 255, yes.

**ADV KENNEDY SC:** That is also dated 2005. August 2005.

Are you able to indicate whether this was the report for the second ...[intervenes]

**MR NKOSI**: Third test.

**ADV KENNEDY SC**: Was this the third test?

**MR NKOSI**: Yes, that is an engineering test that was conducted by CSIR on behalf of LMT. If you can look carefully on the signature page as well. There is no Armscor involvement there.

**ADV KENNEDY SC**: That is page 256?

10 **MR NKOSI**: If you look at page 256, yes.

**ADV KENNEDY SC**: Yes. Okay.

**CHAIRPERSON**: Would Armscor... Would that be a signature from somebody from Armscor there, even though on the face of it, it appears to be CSIR document?

**MR NKOSI**: Yes, as it is the case with the test that we... that was conducted with Armscor being there.

**CHAIRPERSON**: Yes.

**MR NKOSI**: So we work with CSIR as our technology partner.

20 **CHAIRPERSON**: Ja, okay.

**MR NKOSI**: So that one would have a CSIR page as well.

**CHAIRPERSON**: Yes.

**MR NKOSI**: The other one would... Even if for...

**CHAIRPERSON**: Ja.

**MR NKOSI**: You can have Armscor person there or not.

**CHAIRPERSON:** Yes.

**MR NKOSI:** Depending on who requested the test.

**CHAIRPERSON:** But the absence of a signature from somebody from Armscor ...[intervenes]

**MR NKOSI:** Yes, it ...[intervenes]

**CHAIRPERSON:** ...it reflects different - it is not what it should be.

**MR NKOSI:** Yes.

**CHAIRPERSON:** It does not carry the same status. It is  
10 not valid.

**MR NKOSI:** Not necessarily.

**CHAIRPERSON:** Ja.

**MR NKOSI:** Not necessarily, but for the SANDF vehicles, Armscor signature has to be there.

**CHAIRPERSON:** Yes.

**MR NKOSI:** Because Armscor quality, you have to [indistinct] 00.00.20 to take place, Armscor Quality having to oversee the process as well together with Armscor acquisition as well.

20 **CHAIRPERSON:** Ja.

**MR NKOSI:** Yes.

**CHAIRPERSON:** So the absence of Armscor would weaken the weight of this document.

**MR NKOSI:** In this instance.

**CHAIRPERSON:** In this instance.

**MR NKOSI:** Ja, I will have to be specific in this instance.

**CHAIRPERSON:** Ja, ja, okay.

**MR NKOSI:** Because CSIR on their own - they do validate that on their own and then issue certificates.

**CHAIRPERSON:** Ja, okay.

**ADV KENNEDY SC:** Thank you. But did Armscor later accept this test as having been passed?

**MR NKOSI:** Yes, my predecessor accepted it which is a decision that he actually regretted because if you can look  
10 on some of the annexures, CSIR as well, together with Frans Beetge, they had actually – it is Dr Izak Snyman and Dr Frans Beetge, they actually they wrote in their misgiving on the test that had actually happened but why did he sign the certificate I do not know because that certificate was a critical requirement in placing the contract, was a critical requirement in placing a contract if we have to put it on record.

**ADV KENNEDY SC:** Was passing the TP2 test a requirement of the contract in a sense of if you do not  
20 comply then you are in breach of contract?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Alright. Now you have said that you are not sure why Beetge acted in the way he did. Did he express anything to you as to whether he was happy with how he had acted?

**MR NKOSI:** No, in principle he told me everything was actually involved. It is a matter of he says, she says, but basically the bottom line, whoever convinced him to sign I cannot divulge the names and things like that. Basically he had promised that because the standard anyway still requires the TP3 test to be conducted.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** He should not worry about that because there is field, it is mining phase whereby this vehicle will still be  
10 tested and his reasoning for signing was based on those assumptions.

**ADV KENNEDY SC:** So am I right in understanding what you are saying that he was fairly relaxed about agreeing that the passed the TP2 test because he took comfort from the fact that well, if there are any shortcoming they will be picked up at the TP3 stage.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** And you cannot deliver vehicles to the customer unless and until the TP3 test has been  
20 passed.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Okay.

**CHAIRPERSON:** But what do you say about that explanation or reasoning?

**MR NKOSI:** For me if we were together I was not going to



actually issue the certificate.

**CHAIRPERSON:** Not have agreed to that.

**MR NKOSI:** I would not have agreed to the certificate because there is a lot of omissions that were not done on that test.

**CHAIRPERSON:** But he seems to have been told and what he seems to have agreed to does it not amount to not doing your job?

**MR NKOSI:** I cannot say that.

10 **CHAIRPERSON:** Well, you cannot say you cannot say it because you are his successor, you know – would it not be your job if you are faced with the same situation? Would you not be derelict in your duty if you did what he seems to have done.

**MR NKOSI:** Ja, it would have been – it would be tantamount to that.

**CHAIRPERSON:** Ja.

**MR NKOSI:** But I do not know the reasons that actually compelled [inaudible – speaking simultaneously]

20 **CHAIRPERSON:** Ja, but on the fact of it...

**MR NKOSI:** On the fact of it ...[intervenes]

**CHAIRPERSON:** It would be a dereliction of duty as far as you are concerned and it is not something that you would do.

**MR NKOSI:** It is not something that I would have done in

his position.

**CHAIRPERSON:** Ja, yes.

**MR NKOSI:** Yes.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** May I just put to the witness a version that will be given by ...[intervenes]

**CHAIRPERSON:** Mr Beetge.

**ADV KENNEDY SC:** Dr Nell.

**CHAIRPERSON:** Oh, okay.

10 **ADV KENNEDY SC:** From LMT.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Who has given us an affidavit and he has been referred to your affidavit and your comments you believe, as you have said in 9.4 of your affidavit, it was incorrect for Armscor to issue certificates for landmine protection. Dr Nell will say before the Commission that at the completion of the LT – sorry, the TP2 test, Armscor congratulated LMT and issued certificates. That was before your time, correct?

20 **MR NKOSI:** Yes, correct.

**ADV KENNEDY SC:** Yes. Does that give you any reassurance was to what was done, whether it was good or bad?

**MR NKOSI:** Congratulations can mean anything, congratulation can mean that maybe thanks for having

made – passed the engineering tests, see you again on the TP2 that is administered by Armscor. Congratulations can basically mean anything.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** Ja. It does not mean that necessarily that they have been given a go ahead that you are the heroes of the revolution.

**ADV KENNEDY SC:** Right. So you have testified that Armscor did issue a certificate despite the fact that there  
10 were shortcomings in the test, how it was done, as you have indicated. Do those certificates last forever or did they last for a limited period?

**MR NKOSI:** The certificates, oddly, the actually subsequently requested to be changed again in the year 2009.

**ADV KENNEDY SC:** Yes. So you deal with that in your paragraph 10.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** They were reissued in 2009. What I  
20 am really asked for is an answer to this question. Does there have – is there an automatic expiry of a certificate? Why were the certificates reissued? Why were they not just continuing?

**MR NKOSI:** I am not sure. Maybe they picked up there was an issue – there was an error in the certificate that

was issued in 2005 that I was not party to. Fortunately, one of the persons that still – that issued his signature is still there, he still alive, maybe he can answer to that question why. But, my understanding, there was an error with the Casspir(?) report that was stamped on the certificate so they were trying to rectify that.

**ADV KENNEDY SC:** Okay.

**CHAIRPERSON:** But the norm is that when those – when such certificates are issued generally, do they – are they  
10 valid for certain specified periods or are they valid forever?

**MR NKOSI:** It is a certificate that is valid – valid ...[intervenes]

**CHAIRPERSON:** Forever.

**MR NKOSI:** Ja, valid forever, basically.

**CHAIRPERSON:** Ja because it relates to a particular time.

**MR NKOSI:** So one would ask himself because if you sign the certificate you need to have proper documents in front  
20 of you, would make sure that what appears on that certificate is genuine as according to like the test, so whatever reasons that they actually changed, I do not know.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Mr Nkosi, may you please turn to

page 302? Do you have it? I think that appears to be an Armscor certificate of product validation.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** It says that it certifies that the mine protected Patria TP2 hull has been validated against an 8 kilogram TNH surrogate landmine underneath the crew compartment. It gives the test number, it says it has been verified by Armscor in accordance with test procedure and it give the particular test procedure.

10 **MR NKOSI:** Correct.

**ADV KENNEDY SC:** And then it says – it gives the certificate of validation number for land mobility technologies LMT (Pty) Ltd. Is that the LMT that you have been referring to?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** As the representative of Patria vehicles. It was issued on the 7 September 2005.

**MR NKOSI:** Okay.

20 **ADV KENNEDY SC:** Was that the first certificate that you were aware of arising from the TP2 tests in 2005?

**MR NKOSI:** I will tell you now if – the first one that was issued was the VO. If you turn to page 304.

**ADV KENNEDY SC:** 304.

**MR NKOSI:** Yes, that is the chronology, you start with the VO.

**ADV KENNEDY SC:** VO4 is dated ...[intervenes]

**MR NKOSI:** Sorry, 303, 303, sorry.

**ADV KENNEDY SC:** 303, right? So 303 is dated the same date.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** The 7 September 2005.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** So there were two certificates issued in 2005. Correct?

10 **MR NKOSI:** Yes.

**ADV KENNEDY SC:** Yes and both of those certificates you felt were wrongly issued.

**MR NKOSI:** No, no, no, the wheel test passed, the test that was conducted by Armscor.

**ADV KENNEDY SC:** I see.

**MR NKOSI:** It passed.

**ADV KENNEDY SC:** Okay. So was that the one at page 303?

20 **MR NKOSI:** Yes, 303, that is the one that Armscor have all the necessary information.

**ADV KENNEDY SC:** So it passed that?

**MR NKOSI:** It passed the wheel ...[intervenes]

**ADV KENNEDY SC:** Right, but the other one it did not pass and yet Armscor gave it a certificate saying it had passed.

**MR NKOSI:** The other one had failed the hull test.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** And subsequently they did an engineering test that Armscor converted to a TP2 test.

**ADV KENNEDY SC:** Okay. And then the next certificate at page 304 is one issued in September 2009, 7 September 2009. Is this the certificate that your affidavit refers to as having been reissued?

**MR NKOSI:** Yes basically – they basically reissued the  
10 same two certificates, 303 and 304.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** So basically 303 now has been converted to 304, if you can page on the document. There is the wheel test.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** Ja.

**ADV KENNEDY SC:** Now ...[intervenes]

**MR NKOSI:** And then the 302 has been – is the – ja.

**ADV KENNEDY SC:** Right. Now was a further test  
20 actually done by LMT for this vehicle before the reissuing of the certificate in 2009 from what you were able to learn from Mr Beetge or from the documents what were available to you?

**MR NKOSI:** There was no further test.

**ADV KENNEDY SC:** There was no test.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** What – you have a comment on whether it was acceptable or not to reissue a certificate where there was no further test?

**MR NKOSI:** I think the reason for reissuing this statement was apparently having to do – to correct the test number. If you can look at the test number on page 303 and 304 they are different. They are trying to align that for whatever reason.

10 **ADV KENNEDY SC:** You are referring to the test procedure on page [inaudible – speaking simultaneously]

**MR NKOSI:** If you look at the test number.

**ADV KENNEDY SC:** Sorry, hold on, Mr Nkosi, please do not talk over when I am putting a question to you.

**MR NKOSI:** Alright, fine.

**ADV KENNEDY SC:** Because the Chair will not be to hear and the microphone will not record if we are both talking at once.

**MR NKOSI:** Correct..

20 **ADV KENNEDY SC:** So can I just put the question, you are referring on page 302 to the number DEF.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** 2005/166 or 504.

**MR NKOSI:** Yes. Yes, exactly, so it was ...[intervenes]

**ADV KENNEDY SC:** Sorry, which one?



**MR NKOSI:** Yes, the test number was subsequently changed to reflect that one for whatever reason. Ja.

**ADV KENNEDY SC:** I see two numbers on this page, Mr Nkosi.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Both start with DEF 2005.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** The first number refers to /166 and the second to 504. Which one should we be looking at for  
10 your purposes?

**MR NKOSI:** I am specifically zooming at the test number, if you can ...[intervenes]

**ADV KENNEDY SC:** Yes, which one? Is it 166?

**MR NKOSI:** The 159. I am looking page 303.

**ADV KENNEDY SC:** Mr Nkosi, will you not please ...[intervenes]

**CHAIRPERSON:** Are we on the same page?

**MR NKOSI:** Yes, I am on page 303 and 304 now.

**CHAIRPERSON:** Oh, I think we are on 302.

20 **ADV KENNEDY SC:** I was putting to you questions relating to 302.

**MR NKOSI:** 302, correct. Okay, ja.

**ADV KENNEDY SC:** Okay. So on 302 which one should we look at? The test number which ends in 166 or the test procedure which ends in 504?

**MR NKOSI:** Yes, they changed the test number.

**ADV KENNEDY SC:** Sorry, which one is the test number?

Is it 166?

**MR NKOSI:** It is 166, yes.

**ADV KENNEDY SC:** Right and where did they change it?

**MR NKOSI:** This is the wheel – this is the hull test, this is the hull test.

**ADV KENNEDY SC:** Yes, just show me where they changed it.

10 **MR NKOSI:** Okay.

**ADV KENNEDY SC:** You said they changed it somewhere. Where?

**MR NKOSI:** If you look at page 303.

**ADV KENNEDY SC:** 303, yes?

**MR NKOSI:** On the line test number.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** Yes, it is DEF 2005/159.

**ADV KENNEDY SC:** 159.

**MR NKOSI:** Yes.

20 **ADV KENNEDY SC:** So that is the change ...[intervenes]

**MR NKOSI:** That is the change, yes.

**ADV KENNEDY SC:** 166 instead of 159 that should have been the same?

**MR NKOSI:** No, it is not the change. The change – if I may just take you baby steps.

**CHAIRPERSON:** Yes, ja. Ja.

**MR NKOSI:** Look at page 303 and page 304.

**ADV KENNEDY SC:** Yes, I am not getting to 304 yet.

**MR NKOSI:** Yes. Those are, if I may explain?

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** They are the same – they are the wheel tests.

**CHAIRPERSON:** Just come closer to the mic and raise your voice a bit? Yes, okay, just start afresh, explain?

**MR NKOSI:** Yes. 303 and 304 are the wheel tests.

10 **ADV KENNEDY SC:** So 302 we can ignore because that is the hull test?

**MR NKOSI:** Yes, that is the hull test.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** That is the point that I was trying to make.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** So what was the problem with 303 that they needed to change?

20 **MR NKOSI:** They changed the test number – unfortunately I am not party to the reasons why did they change the test number.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** As you can see there is change on that, it says – say it is a wheel, it is a front wheel, on 304 they changed the test number on that.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** Ja.

**ADV KENNEDY SC:** So it was ...[intervenes]

**MR NKOSI:** Basically they were trying to realign for whatever reasons that I am – that I was not party to.

**ADV KENNEDY SC:** Okay but it was not because they had retested the vehicle.

**MR NKOSI:** No, not.

**ADV KENNEDY SC:** And it was now passing.

10 **MR NKOSI:** No.

**ADV KENNEDY SC:** It was because they wanted to change the number for reasons you do not know.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Okay. Thank you.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Now in your affidavit you have a lengthy section that deals with your interactions with Mr Goosen, internal memorandum, a desktop study conducted in 2009 and a landmine blast analysis in August 2016 and  
20 then you go back to the internal memorandums. In fact later internal memorandums between you and Mr Goosen on a landmine protection issue.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Now I would like you – you deal from paragraph 13.4.

**MR NKOSI:** Page number?

**ADV KENNEDY SC:** I am giving you that in a moment. Just bear with me, if you would?

**CHAIRPERSON:** 13.4 is at page 20.

**ADV KENNEDY SC:** Thank you, Chair. From page 20 you deal with internal memo 1 and then memo 2 and then the affidavit goes on for some pages to deal with a whole lot of memos and so forth.

**MR NKOSI:** Yes, yes, yes.

10 **ADV KENNEDY SC:** I do not believe, subject to the Chair's guidance, that it is necessary for us to go into all the detail of the memos, they are all available and you have analysed for the assistance of the Commission.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Can you just tell us, if you would please, Mr Nkosi, what is being dealt with at a very summary level?

**MR NKOSI:** Okay.

20 **ADV KENNEDY SC:** What was your process or interaction with Mr Goosen? What did the desktop study involve and all these memos? What was the purpose of these communications?

**MR NKOSI:** Basically I believe once they realised that there were some flaws on the tests they tried to conduct other desktop studies and simulation studies to try and

move away from conducting a TP3 test and actually classifying the vehicle has actually reached a manufacturing baseline.

So from 2014 Mr Beetge came to me, he was absolutely worried now ...[intervenes]

**ADV KENNEDY SC:** He was what? Worried.

**MR NKOSI:** Worried.

**ADV KENNEDY SC:** Worried, yes?

**MR NKOSI:** Because there were rumours, there was a  
10 groundswell of evidence that there is manufacturings  
happening across the country for whatever reason but they  
have actually not reached the point whereby ...[intervenes]

**ADV KENNEDY SC:** Try and speak up a bit please and  
please ...[intervenes]

**CHAIRPERSON:** You are lowering your voice.

**MR NKOSI:** Yes, can you hear me now?

**CHAIRPERSON:** Just go closer to the mic and try and  
raise it.

**MR NKOSI:** Yes, can you hear me now? Yes, can you  
20 hear me?

**CHAIRPERSON:** The more you lean back the more I do  
not hear you.

**MR NKOSI:** Yes, can you hear me now?

**CHAIRPERSON:** Ja.

**MR NKOSI:** Mr Beetge, whilst we still – I was still his

understudy, he was actually worried with whatever is happening across the country when whereby there was a go-ahead being given to start building the hulls on the vehicle that has not been tested.

So he was worried now that you know what, looks like they are busy building the hulls but we have not tested – we have not certified the vehicle.

So that is why I was now busy writing the memo that Phillip, I still need the vehicle test before you can  
10 declare that reached the manufacturing base. We have to test the vehicle.

So basically that was that because we tried to also introduce a simulation to show that the vehicle is – can be fit for people to use but the RSM was going to disappear, you cannot use simulations to certify. So basically all the communications was to actually try to get the vehicle to Armscor to test be that is a phase that was – that has not been completed. That, as an engineer, as a South African, I could not let that slide because it is our soldiers' lives  
20 that are actually involved. So that is why I was quite vociferous on that, that you cannot – not under my watch.

It could have happened in 2005 whereby the TP2 had a lot of unanswered questions but on this specific one, because you will never know, it could my child who is actually on that vehicle and then I had given it a go-ahead

without giving it a go-ahead. So basically I – we fought, together with Frans Beetge because he realised that the tide now is actually moving towards the right before time.

There was euphoria and excitement on the manufacturing before we had actually given the go-ahead that we have tested all the necessary points to now bless the manufacturing [indistinct – dropping voice]

**CHAIRPERSON:** Was that change of attitude maybe because of your role that you were now playing in this  
10 whole thing which obviously you did not play in 2005 because you were not there?

**MR NKOSI:** Yes, the role now it will be Phumlane Nkosi's name that had actually led such is a critical requirement on the RSMA standard to be ignored so I could not allow that, together with Armscor. Armscor with my divisional manager, we started writing memos.

**CHAIRPERSON:** Yes.

**MR NKOSI:** To test the vehicle.

**CHAIRPERSON:** Yes.

20 **MR NKOSI:** Because testing the vehicle cost a fraction of the entire contract, it was – it is the right thing to do, so that we know we have done due diligence as Armscor employees, as engineers, as South Africans.

**ADV KENNEDY SC:** What position does – is Mr Goosen still employed by Denel – by Armscor, I beg your pardon.



**MR NKOSI:** No, no, no, I think throughout these interactions I think somehow he decided to leave the employ.

**ADV KENNEDY SC:** He left.

**MR NKOSI:** Ja, he left the company I think towards the end of 2017 for whatever reasons, I do not know.

**ADV KENNEDY SC:** Okay. Ja, just try and – if you can, just try and direct your answer to the specific question. My question was not why he left but I said is he still there.

10 **MR NKOSI:** Yes.

**ADV KENNEDY SC:** So no.

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** So he has resigned. What position before he resigned did he occupy when you were dealing with him in these meetings and the memos that are referred to in your affidavit?

**MR NKOSI:** He was the programme manager for the programme [indistinct – dropping voice]

20 **ADV KENNEDY SC:** Okay. And if I understood your evidence earlier correctly, but please correct me if I am wrong, these communications suggested to you that there were attempts to try and fix up a problem that had had already started as far back and 2005?

**MR NKOSI:** Yes, they busy trying to ameliorate that.

**ADV KENNEDY SC:** To ameliorate it?

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Yes.

**MR NKOSI:** But putting things that are not scientifically proven to actually provide safety for the soldiers.

**ADV KENNEDY SC:** Try and keep your volume up please, Mr Nkosi.

**MR NKOSI:** Yes.

**ADV KENNEDY SC:** Just like I am keeping my volume up. Try and keep it up, sometimes you start loud and then you  
10 sink down.

**CHAIRPERSON:** Yes, your voice goes down, Mr Nkosi. So maybe you should keep much closer to the mic that would be normal.

**MR NKOSI:** That is fine, I will do that.

**CHAIRPERSON:** Ja because I think you easily slow down and then you become, your voice becomes ...[intervenes]

**MR NKOSI:** Okay, can you put that question again?

**ADV KENNEDY SC:** Okay. What position did he hold at the time? You said programme manager.

20 **MR NKOSI:** Correct.

**ADV KENNEDY SC:** Was he trying to fix up problems with the TP2 certificates or was he trying to get a TP3 certificate at that stage?

**MR NKOSI:** I think he was trying to get a TP3 certificate at that stage without actually testing the vehicle.

**ADV KENNEDY SC:** Without testing the vehicle?

**MR NKOSI:** Correct.

**ADV KENNEDY SC:** Why do you say you think that is the case?

**MR NKOSI:** It is my opinion because they were ...[intervenes]

**ADV KENNEDY SC:** It is based on what?

**MR NKOSI:** It is based on what has been happening on Denel when there was apparently manufacturing baseline  
10 that has been reached that we are not familiar to.

**ADV KENNEDY SC:** Now legally is it possible to – sorry, in fact we have dealt with that. Sorry, Chair, may I just rephrase it? Has Denel in fact been manufacturing these vehicles without a TP3 certificate?

**MR NKOSI:** My involvement is largely on the landmine protection. If I may just answer it like that. There has not been any TP3 test that has been done. So you are correct that Denel has been manufacturing vehicles without a TP3 test.

20 **CHAIRPERSON:** The fixing of a problem that would have occurred or problems that had occurred in 2005, would that be a basis to suspect that maybe there was an attempt to conceal something or that would be going too far?

**MR NKOSI:** Yes, I will be going too far, I am not sure.

**CHAIRPERSON:** You are not sure.

**MR NKOSI:** Yes, I am not sure.

**CHAIRPERSON:** Okay, but certainly it was an attempt to fix the problem whether correctly or not correctly might be another issue.

**MR NKOSI:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV KENNEDY SC:** Now when it – and in fact your affidavit records also your confirmation now that Denel has been – has started manufacturing platform hulls.

10 **MR NKOSI:** Yes.

**ADV KENNEDY SC:** You refer to DLS, is that Denel Land Systems? Are they manufacturing the hulls?

**MR NKOSI:** That is what I heard, yes. That is what actually spurred Fran Beetge to tell me that you know what, you cannot let this thing to happen because I am just about to retire, it cannot be – they are not supposed to be manufacturing the hull at this point before we actually give them a go-ahead by testing the vehicle, by certifying the vehicle to [indistinct – dropping voice]

20 **ADV KENNEDY SC:** Had they already started manufacturing at the time that he left?

**MR NKOSI:** Basically there was a groundswell of evidence that ...[intervenes]

**ADV KENNEDY SC:** Sorry, had they started manufacturing?

**MR NKOSI:** I am not sure.

**ADV KENNEDY SC:** You are not sure.

**MR NKOSI:** Ja.

**ADV KENNEDY SC:** Thank you. And as we sit or stand here today has there yet been a TP3 certificate issued for these vehicles?

**MR NKOSI:** Nope.

**ADV KENNEDY SC:** And you refer – if I can take you in your affidavit to page 27. Could you read for the Chair  
10 please your paragraph 14.6? In fact, sorry, 14.5 to the end.

**MR NKOSI:** “In short, TP3 test is a fundamental test, it is fundamental to test and evaluate all design changes implemented since the structural TP2 platform tests and to assess secondary fragmentation risks and reparability.”

**ADV KENNEDY SC:** Yes, carry on?

**MR NKOSI:** The RSMA standard TP3 test on the section  
20 variant would address the critical aspects of evaluating the assessed worst case scenario for occupant survivability of the Hoefyster family of vehicles in order to secure the best results for the SANDF and the future users and operators of the Badger systems. Lastly, it will ensure compliance with this RSMA standard as required by the

SANDF.”

**ADV KENNEDY SC:** Carry on?

**MR NKOSI:** “A TP3 test which was not addressed on the system specification document, Armscor has committed that they will allocate funds in order to conducts these tests. In November 2013 Denel committed in complying with the request to conduct TP3 testing on this vehicle.”

**ADV KENNEDY SC:** And your last sentence?

10 **MR NKOSI:** Yes.

“I am aware that Denel has started a manufacture platform hulls despite the fact that the vehicles have not been certified in the TP3 test.”

**ADV KENNEDY SC:** Can you give just in a sentence maybe to the Chair your feeling as a citizen, as you put it earlier, and as a highly qualified mechanical engineer responsible for important issues in Armscor, can you just give you overall conclusion as to how you feel about this issue relating to the certification of these vehicles?

20 **MR NKOSI:** Yes, for me the results of the fight that started on the memos on 2005 culminated in paragraph 14.7 where Denel with the assistance of DVS Vehicles Systems they acknowledged the importance of this test and they had actually put a plan in place to make sure that this vehicle is actually tested but now the question remains,

with all these hulls that have been manufactured, what will happen if the vehicle fails? But if it passes then everyone is happy and there will not be issues but it is important to actually test.

As a South African holding this position that I am holding, I would not have allowed this thing to slide without proper tests being conducted. Let alone whatever happened in 2005 with the TP2 test which was – it is important to bring the world-defined baseline to be tested  
10 because the vehicles [indistinct – dropping voice] like the SANDF.

**ADV KENNEDY SC:** Just ask a final question on the same topic. You suggested earlier that some of these changes or efforts that were being made, for example, the change in a certificate test number and in some of the efforts to re-programme things to see if they could achieve progress in relation to a certification. From a practical point of view what – are there significant implications that would flow, if it were true, that people are manipulating things, changing  
20 things inappropriately or is it just simply a question of paperwork and test number not really mattering?

**MR NKOSI:** I am not at liberty to complain – to comment on the implications on people who are trying to do this or do that but what I can actually comment on are the importance of the test.

**ADV KENNEDY SC:** Importance of a test.

**MR NKOSI:** Yes, whether people were trying to hide or not, it is not my business to compare.

**ADV KENNEDY SC:** Okay.

**MR NKOSI:** As an RSMA standard officer, as a Plus Specialist we have to conduct that test before we give it to our users.

**ADV KENNEDY SC:** Right. Chair, we have nothing further, thank you.

10 **CHAIRPERSON:** Thank you, Mr Nkosi, for coming to assist the Commission, if we need you to come back and assist us you will be asked but thank you very much, you are now excused.

**MR NKOSI:** Thank you.

**ADV KENNEDY SC:** Thank you, Chair, may we now turn to call, with your leave, the next witness?

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** Who is Mr Mlipha. Do you want to take a short adjournment while...?

20 **CHAIRPERSON:** Ja, okay, let me take a five minutes adjournment while everything is being prepared.

**ADV KENNEDY SC:** Thank you, Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**



**CHAIRPERSON:** Are you ready Mr Kennedy?

**ADV KENNEDY SC:** Thank you, yes we are Chair.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** So with your leave may we call as the next witness Mr Xolani Mlipha, for the transcribers' benefit it is M-l-i-p-h-a, may he then be sworn in?

**CHAIRPERSON:** Okay which bundle?

**ADV KENNEDY SC:** Chair it is Denel Bundle 02 and it is Exhibit W12.

10 **CHAIRPERSON:** Okay please administer the oath or affirmation.

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

**MR MLIPHA:** Xolani Lincoln Mlipha.

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

**MR MLIPHA:** I do not.

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

**MR MLIPHA:** Yes I do.

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

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

**XOLANI LINCOLN MLIPHA:** [duly sworn, states]

**CHAIRPERSON:** You may be seated. Oh Mr Kennedy this is the witness who made a request?

**ADV KENNEDY SC:** Yes that has been resolved Chair, I have explained the position to the witness and ...[intervenes]

**CHAIRPERSON:** And he understands?

**ADV KENNEDY SC:** He understands the situation and will proceed, thank you Chair.

**CHAIRPERSON:** Okay, alright, we appreciate if you  
10 understand Mr Mlipha.

**MR MLIPHA:** Yes Chair thank you.

**CHAIRPERSON:** Okay, alright.

**ADV KENNEDY SC:** Good afternoon Mr Mlipha.

**MR MLIPHA:** Good afternoon Mr Kennedy.

**ADV KENNEDY SC:** Mr Mlipha may I just ask you to look towards the Chair, rather than me, even though I am going to be putting most of the questions and try and keep up the volume of your voice and try to be clear and very brief if you may.

20 **MR MLIPHA:** Understood.

**ADV KENNEDY SC:** Thank you. May I just for the record confirm with you is it correct that you have signed an affidavit at the request of the Commission?

**MR MLIPHA:** That is correct.

**ADV KENNEDY SC:** May I take you in the bundle that is

in front of you, that is Denel Bundle 02, Exhibit W12, there is a statement, it is called a statement, if I may ask you to look at the top left hand corner of each page for the page number, you see that.

**MR MLIPHA:** Yes.

**ADV KENNEDY SC:** The page number on the first page of your statement ends in the digits 004.

**MR MLIPHA:** Understood.

**ADV KENNEDY SC:** But we are not going to use the  
10 zeros, we will just call it four.

**MR MLIPHA:** Understood.

**ADV KENNEDY SC:** You confirm that this is the beginning of the affidavit that you signed?

**MR MLIPHA:** I do.

**ADV KENNEDY SC:** Can you turn to page 42.

**MR MLIPHA:** Yes.

**ADV KENNEDY SC:** Is that your signature above your name?

**MR MLIPHA:** That's correct.

20 **ADV KENNEDY SC:** And you signed that on the 16<sup>th</sup> of October in front of a Commissioner of Oaths.

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** Is it correct that you have been through this affidavit and you are satisfied that the contents are true and correct?

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** Thank you. Chair may we then ask formally for the admission of this affidavit with its annexures, Denel Bundle 02, Exhibit W12 the affidavit of Mr Mlipha.

**CHAIRPERSON:** The statement/affidavit of Mr Xolani Mlipha starting at page 4 is admitted as Exhibit W12.

**ADV KENNEDY SC:** Thank you Chair, may I then proceed?

**CHAIRPERSON:** You may proceed.

10 **ADV KENNEDY SC:** Thank you. Mr Mlipha your affidavit is very helpful in that it gives a lot of clarity and detail, I am going to try in the interests of time and also to avoid unnecessary reference to detail to focus just on particular areas with the Chair's leave and subject to his guidance may I take the witness just very briefly through his background.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** His professional background and his employment background.

20 **ADV KENNEDY SC:** Thank you Chair. Mr Mlipha you are a mechanical engineer by profession?

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** You hold as I understand a national diploma in mechanical engineering.

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** And you originally worked for Naschem.

**MR MLIPHA:** Correct.

**ADV KENNEDY SC:** And Naschem from there you moved to DLS to Denel Land Systems.

**MR MLIPHA:** Correct Chair.

**ADV KENNEDY SC:** When was that that you moved to DLS?

**MR MLIPHA:** It was in 2004, right.

10 **ADV KENNEDY SC:** Right, and how long did you stay there?

**MR MLIPHA:** I stayed there until 2008 end of year, December.

**ADV KENNEDY SC:** And where did you go from there?

**MR MLIPHA:** I joined Armscor.

**ADV KENNEDY SC:** And is that still your current employer?

**MR MLIPHA:** That's correct Chair.

20 **ADV KENNEDY SC:** So you joined when, in January 2009?

**MR MLIPHA:** That is right, on the 5<sup>th</sup>.

**ADV KENNEDY SC:** And what is your current job title at Armscor?

**MR MLIPHA:** Systems Engineer.

**ADV KENNEDY SC:** When you were still at DLS between

2004 and 2008 did any of your duties and functions involve the Hoefyster project?

**MR MLIPHA:** Yes.

**ADV KENNEDY SC:** Just in a sentence or two please just be very brief, explain what sort of role you played in relation to the Hoefyster Project.

**MR MLIPHA:** At Denel I was part of the compilation team, I was working on the ammunition segment where we prepared the offer to submit to Armscor and on behalf of  
10 Denel to do the job.

**ADV KENNEDY SC:** Am I right in assuming that the ammunition segment is different from the hull element of these vehicles?

**MR MLIPHA:** Yes it is different, correct.

**ADV KENNEDY SC:** Were you part of the negotiating team from Denel in relation to the contract for the project Hoefyster being signed in 2007?

**MR MLIPHA:** No.

**ADV KENNEDY SC:** Okay, now just tell us what in very  
20 brief terms your role at Armscor now in your current capacity?

**MR MLIPHA:** Chair my role is to do the systems engineering work on behalf of Armscor and that basically entails checking all the verification against each requirement that the contract has requested from Denel as

the contracted agency, so I ensure that requirements are met and I check that it is correct.

**ADV KENNEDY SC:** And this is the contract that was awarded by Armscor to Denel in what year?

**MR MLIPHA:** In 2007 if I am not mistaken.

**ADV KENNEDY SC:** Now in your affidavit you refer, and here Chair may I just refer to the page number, in your affidavit Mr Mlipha you deal at page 12 with two stages, two phases rather for the Hoefyster Project, or Hoefyster  
10 Contract I beg your pardon.

**CHAIRPERSON:** At what page Mr Kennedy?

**ADV KENNEDY SC:** 12.

**CHAIRPERSON:** 12, okay.

**MR MLIPHA:** Page 12. Yes Mr Chair?

**ADV KENNEDY SC:** And you distinguish between two phases, you say that the Hoefyster contract was divided into two phases, the development phase and the production phase, just in non-technical terms if you are able to just explain briefly the difference between the two,  
20 what is the development phase?

**MR MLIPHA:** Chair development phase would entail work that would be done to really start at times from scratch, at times not from scratch as you have heard that the vehicle was sourced from a different country, from a different company and we would make it suitable for South African

needs, that is development work and then the – this other phase, that is the development phase, the other phase is the production phase where now what has been confirmed through development, the requirements that have been made are now producing many numbers of that particular product.

**ADV KENNEDY SC:** And the second phase?

**MR MLIPHA:** Apologise Mr Kennedy, I thought – yes second phase would then be ...[intervenes]

10 **ADV KENNEDY SC:** Is the production phase, what stage is the project at, at the moment?

**MR MLIPHA:** At the moment we are still in the development phase Chair because we have not obtained the baseline that says development is completed.

**ADV KENNEDY SC:** And what is required to achieve that baseline still?

**MR MLIPHA:** Chair what is required is to obtain a baseline that is referred to as the product baseline, abbreviated as PBL.

20 **ADV KENNEDY SC:** That's a PDM?

**MR MLIPHA:** PBL, Papa, Bravo, Lima, PBL.

**ADV KENNEDY SC:** PBL, I beg your pardon, now PBL is that specified anywhere as to what it requires?

**MR MLIPHA:** It would be – it is specified Chair yes.

**ADV KENNEDY SC:** And where would one find that being



specified?

**MR MLIPHA:** Obviously in the contract it is also specified Chair but also in accordance with the established engineering standards that definition would be given.

**ADV KENNEDY SC:** Right, if I can take you in your affidavit to page 16, one six.

**MR MLIPHA:** I am there Chair.

**ADV KENNEDY SC:** You refer in paragraph 11 to products baseline, is that the PBL concept that you were referring to  
10 earlier?

**MR MLIPHA:** That's correct Chair.

**ADV KENNEDY SC:** Won't you please read out to the Chair what you say in paragraph 11.1?

**MR MLIPHA:** Apologies Mr Kennedy, 11.1?

**ADV KENNEDY SC:** Sorry, we are page 19, paragraph 11.

**MR MLIPHA:** Okay, I will read.

**ADV KENNEDY SC:** It follows the first line of paragraph  
11.

**MR MLIPHA:** Yes I will read.

20 "The product baseline is an approved set of data items, typically the product specification, integrated support plan, audit reports and results of reviews, which consolidates and documents the results of the design and development phase."

**ADV KENNEDY SC:** Thank you. Now the – am I right in

understanding that the product baseline, the PBL, is just one of various baselines that have to be satisfied, if we look on the same page above the product baseline there's paragraph 10, there's allocated baseline.

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** And then below paragraph 11 you will see 12, manufacturing baseline.

**MR MLIPHA:** Correct.

**ADV KENNEDY SC:** If we page backwards take one page  
10 back, we will see also that there are two other baselines, paragraph 8, a requirements baseline an RBL, and a functional baseline, FBL.

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** And you have helpfully explained what each of these terms means. Now may I take you again – I am sorry Chair – yes page 14, paragraph 5, it deals with the systems acquisition management process and you say in paragraph 5.1:

20 "At Armscor the systems acquisition management process is governed through the DAP 1000 policy."

And you have attached a copy of that, as one of the annexures, which is the SANDF standard for programme baselines during the system acquisition management process.

**MR MLIPHA:** That's correct Chair.

**ADV KENNEDY SC:** SANDF in this context – correct me if I’m wrong – I understand is the customer in the – ultimate customer in the Hoefyster Project?

**MR MLIPHA:** Absolutely correct Chair.

**ADV KENNEDY SC:** So it is Armscor’s customer, correct?

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** But you are in turn procuring these items from Denel?

**MR MLIPHA:** That is correct Chair.

10 **ADV KENNEDY SC:** But the SANDF lays down a DAP1000 policy, being their standard. How is that used, what is that meant to achieve and how is that used?

**MR MLIPHA:** Chair that policy defines and provides guidelines as to how the acquisition is to be executed within the defence, particularly our defence industry.

**ADV KENNEDY SC:** Right, and you then set out some detail about milestones, phases and then you get the project baselines. We are going to be looking specifically again in a moment at the product baseline, the PBL  
20 element that is one of these various baselines, is that regulated by the SANDF DAP1000 policy?

**MR MLIPHA:** Chair the policy cites other standards, so the next applicable document that it cites is the RSA Military Standard Number 3.

**ADV KENNEDY SC:** Is that referred to in your paragraph

5.1 page 14?

**MR MLIPHA:** That is correct Chair.

**ADV KENNEDY SC:** So am I right in understand there are – there is a policy together with other standards and they include the Standard 3, the RSA military standard 3 that you referred to?

**MR MLIPHA:** Absolutely.

**ADV KENNEDY SC:** Right, I interrupted you, and how does the PDL, does that relate to the standard, Mil  
10 Standard 3 standard or what?

**MR MLIPHA:** Yes Chair PDL is reference are the same as Standard 3 as one of the baselines that have to be achieved as part of doing projects acquisition.

**ADV KENNEDY SC:** Right. Now I would like to go back to the idea of the PBL and you – take you to page 20 of your affidavit.

**MR MLIPHA:** Page 20, yes. I am there Chair.

**ADV KENNEDY SC:** Paragraph 15 is headed DLS's tailored system acquisition management process leading to  
20 increased risk for Armscor. Now before we get to the risk for Armscor can you just explain to us please what the tailored element is of this. Who tailored what and why?

**MR MLIPHA:** Chair stemming from RSA Standard 3 it states that a contractor, or anyone, whoever is doing the job, they are allowed to tailor, they may tailor. In this

instance the contract allowed and they tailored for a PBLA, let me call it that way and it is specified like that in the contract, so that is what was tailored.

**ADV KENNEDY SC:** Just give us that again, what PB?

**MR MLIPHA:** PBLA.

**ADV KENNEDY SC:** PBLA?

**MR MLIPHA:** Papa, Bravo, Lima, Alpha.

**ADV KENNEDY SC:** Right, and what does that stand for?

**MR MLIPHA:** It stands for they call it – it was a risk  
10 reduction before the authentic PBL that Armscor would  
require.

**CHAIRPERSON:** I think Mr Kennedy wanted to what P stands for and what L and A stand for, isn't it Mr Kennedy?

**ADV KENNEDY SC:** I did yes thank you Chair.

**MR MLIPHA:** Apology Chair, P stands for Product, B stands – B and L stands for baseline.

**ADV KENNEDY SC:** And the A, so it is the same PBL we were talking about earlier?

**MR MLIPHA:** Yes Mr Chair, it is the same PBL we were  
20 talking about it is just now this is a tailored one.

**ADV KENNEDY SC:** Okay, now ...[intervenes]

**CHAIRPERSON:** And the A?

**MR MLIPHA:** The A is just a subscript that they – the A is a subscript that was provided to differentiate it from the one that we would want as Armscor, they call that one

PBL1.

**CHAIRPERSON:** Oh, okay.

**ADV KENNEDY SC:** Now was a PBL specified by Armscor before it was tailored?

**MR MLIPHA:** Chair I would say yes because RSA Standard 3 is an applicable document as part of this contract and one is supposed to do acquisition going through all these baselines yes, though one may tailor of course.

10 **ADV KENNEDY SC:** Yes, now the contractor with whom you contracted at Armscor or our colleagues did is DLS?

**MR MLIPHA:** Correct chair.

**ADV KENNEDY SC:** Now is it normal and permissible for contractors to tailor a process relating to the PBL element?

**MR MLIPHA:** Yes it is permissible I suppose it is not only limited to a PBL as the contract also did not just limit the tailoring to PBL, there are other baselines, ADL, that were also tailored, they tailored yes Chair.

20 **ADV KENNEDY SC:** And to what extent are contractors allowed to tailor these items such as a PBL, did they have to comply with minimum standards or can they – is the sky the limit in relation to how they can tailor?

**MR MLIPHA:** Chair there is no prescribed way of tailoring but I would say it goes without misunderstanding that risk is part of tailoring that one must address firstly.

**ADV KENNEDY SC:** So the PBL that is laid down in the Mil 3 specification is the standard generally applicable one but that may be tailored by a particular contractor from time to time?

**MR MLIPHA:** Correct Chair.

**ADV KENNEDY SC:** And when a contractor such as DLS does tailor the PBL is that subject to approval by Armscor?

**MR MLIPHA:** Yes Chair.

**ADV KENNEDY SC:** So a contractor is not at large to  
10 simply tailor unilaterally?

**MR MLIPHA:** That is correct Chair of course it would have to be accepted.

**ADV KENNEDY SC:** Sorry Chair if I may have a moment. Now in relation to the Hoefyster project and the contract between Denel Land Systems and Armscor has there in fact been a tailoring that has been done?

**MR MLIPHA:** Yes there has been yes. Yes Chair.

**ADV KENNEDY SC:** And was that done with the permission of Armscor?

20 **MR MLIPHA:** Yes Chair.

**ADV KENNEDY SC:** Can I take you in your affidavit if you can turn please to page 20.

**MR MLIPHA:** I am there Chair.

**ADV KENNEDY SC:** You say in your affidavit, para 15.1:

“DLS tailored the process to their approach.

Numerous engagements with DLS ensued where it was attempted to highlight the risks associated with the tailored approach.”

And then you say:

“An extract of the DLS systems engineering master schedule, the SEMS which forms of the contract highlights how the acquisition process will be tailored during the project execution.”

And then you refer to an annexure, and in particular  
10 specific pages, can you just tell the Chair please what is the SEMS of DLS involved?

**MR MLIPHA:** Chair this SEMS, Systems Engineering Master Schedule is a document where the contractor plans at what point they would do engineering activities and this is where it is evident and one can see that from the onset at contracting that amongst others this tailored baseline was included.

**ADV KENNEDY SC:** And that was part of the contract?

**MR MLIPHA:** Correct that was part of the contract Chair.

20 **ADV KENNEDY SC:** Now if I can continue in your affidavit, paragraph 15.3:

“the processes to juxtaposed to the system acquisition process discussed in paragraph 5 above to highlight the difference in the sequencing of reviews and audits. The intent is to highlight all the



deliverables in the yellow block so that one can highlight the outer phase reviews and audits.”

Just please explain that to us in hopefully non-technical terms as to what the point of difference was that came about by DLS introducing its SEMS as part of the contract? It is a difference from what?

**MR MLIPHA:** Yes, in particular I don't know whether the SEMS is in front of you Chair, in particular there are reviews that were happening at a later point and audits  
10 that were happening earlier, that is what I attempt to show here, yes that is what I am trying to say that one has to juxtaposed it with what is in the normal standard that is untailed when we compare the tailored version to the untailed version.

**ADV KENNEDY SC:** Now is the untailed version the PBL?

**MR MLIPHA:** Yes, in the untailed version that RSA Standard 3 one will see that there is a PBL there, and then Chair you will also notice that there are audits the FCA  
20 functional configuration audit and the physical configuration audit it is important to for one to note when they happen.

**ADV KENNEDY SC:** So is it the timing of those specific steps that have to be taken under the PBL?

**MR MLIPHA:** That is correct Chair, the sequencing is

important.

**ADV KENNEDY SC:** Yes and that is the standard PBL not the one that was later introduced in Denel?

**MR MLIPHA:** Yes correct Chair.

**ADV KENNEDY SC:** I think you mentioned earlier that the one that was tailored and produced the Denel specific variation was called PBL A?

**MR MLIPHA:** The tailored version includes PBL A but also Chair, maybe I was clear, it does include the PBL 1 and  
10 PBL 1 would be the one that is equal to what Armscor would desire.

**ADV KENNEDY SC:** Right. So there are differences between the PBL 1 and PBL A?

**MR MLIPHA:** Correct Chair.

**ADV KENNEDY SC:** Were they significant differences in your opinion?

**MR MLIPHA:** They are Chair.

**ADV KENNEDY SC:** And we will get in a moment to why you say that and the risks that you expand on in your  
20 affidavit but you have mentioned that both the PBL A and the PBL 1 were specified in the contract.

**MR MLIPHA:** Correct Chair.

**ADV KENNEDY SC:** Now if there are differences between the PBL A and the PBL 1 which version did Denel, DLS have to comply with according to your understanding?

**MR MLIPHA:** Denel is compelled to comply with both of them, it is the – the PBL A is earlier than the PBL 1, PBL A is earlier than PBL 1, the reason for it is that they said they were reducing risk.

**ADV KENNEDY SC:** Sorry did you say earlier than?

**MR MLIPHA:** Ja it would happen earlier than PBL 1.

**ADV KENNEDY SC:** So are you saying that there had compliance with PBL A once that was achieved only then could they then be complying with PBL 1 they had to go  
10 through both steps.

**MR MLIPHA:** Correct Chair, they are both part of the contract. Of course achieving PBL A then they would do work to also achieve PBL 1 and PBL 1 is the one is the one that Armscor is interested in.

**ADV KENNEDY SC:** Yes, so the fact that there was a PBL A that initially had to be complied with before PBL 1 is of less significance to you at Armscor, you are concerned really with the PBL 1 as it was called?

**MR MLIPHA:** For me from the technical perspective PBL 1  
20 is important because that signifies as we read the definition earlier that signifies the achievement of requirements and the end of development.

**ADV KENNEDY SC:** Okay, now I would like to take you please, because we need you to explain his, page 20, paragraph 15.4.

**MR MLIPHA:** Okay Chair.

**ADV KENNEDY SC:** This was my opinion at the time, I think it means it was my opinion at the time that the risk had significantly increased for Armscor as payments were linked on the yellow block deliverables whereas the hardware progress was lagging behind. It is however no longer an opinion as the risk has indeed materialised in the sense that development was scheduled for five years ending in 2012, but it is currently 2020 and development is  
10 still not yet completed.

Can you just please explain that to us in practical, simple terms if you would. You were indicating that, if I understand it, you were saying that by tailoring the PBL to PBL A introduced something which brought about risk, risk for whom, for Armscor or for DLS or for whom?

**MR MLIPHA:** In my opinion it introduced, it increased the risk for Armscor.

**ADV KENNEDY SC:** Did it introduce risk for the achievement of the Hoefyster Project itself?

20 **MR MLIPHA:** It is my opinion correct yes Sir.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** But are you saying it introduced or are you saying the risk was always there but it increased the risk?

**MR MLIPHA:** Correct Chair I think you sum it well.

**CHAIRPERSON:** It increased the risk.

**MR MLIPHA:** The risk was there, the attempt was to reduce the risk.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** Unfortunately it increased the risk for us because as it is said that I – as I stated that activities were linked to payments. Lines were linked to payment activities so at execution of any line that released cash whereas the solution seemed to lag behind or the achievement of the requirement seemed to lag behind and now as we find the  
10 situation today yes.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** And in what sense did it – it change the timing for the – for the payment of particular items? Was that brought about by the introduction of the PBLA?

**MR MLIPHA:** Chair I have to be clear. The contracting was set out from the start and it executing any activity or a contracted line the project had to – had to be followed. So the – at executing any activity it meant that – and if it was correct it meant that payment had to be made. So that was –  
20 that was established as part of the contract. It is in the contract.

**ADV KENNEDY SC:** If there had been – if it had simply been left at PBL1 rather than tailoring it to PBLA would that have improved the situation?

**MR MLIPHA:** Well my understanding is that if I can answer

that in a way that I understand it to be technically correct is that what is – what we are interested in is achieving the requirements. Unfortunately I do not deal with the project management side of works. I am interested in achieving the requirements.

So for me I am really interested that there should be point where requirements are met and that would be a PBL1. I hope that clarification.

**CHAIRPERSON:** And this – and in this case they – should  
10 they have been met by 2012?

**MR MLIPHA:** It is correct Chair.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** That was – the development term was set until that time.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** Right.

**CHAIRPERSON:** Must – must mean that there is something that – is there something that went terribly wrong that by 2020 they have not been met?

20 **MR MLIPHA:** There were indeed challenges Chair.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** There were...

**CHAIRPERSON:** Serious challenges.

**MR MLIPHA:** Ja. Technical challenges indeed yes.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** Yes, yes, yes.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** And do you believe that the issues that you have raised and are – will still raise in relation to the PBL tailoring has contributed to that? Has that been one of the challenges or the reasons for the delay in completion of the project timeously?

**MR MLIPHA:** Chair I – I – It is my opinion Chair that ja although I am not responsible for planning and phasing the  
10 project I think it contributed in the sense that financial planning is – or financial activities are coupled to those activities and yes as part of also the contract I read that PBLA was one of the major decision points.

**CHAIRPERSON:** Now as we speak in 2020 bearing in mind that the requirement should have been met in 2012 is there – what is the projection of when the requirements will be met if you are able to say? Or is there no light at the end of the tunnel?

**MR MLIPHA:** Chair I think August this year we – oh ja I  
20 think end of August this year we sat with the contractor and went through the compliance against requirements and the team or Armscor and DLS have merged towards a position where we agree what is – what is achieved and what is not achieved because we had a serious dispute relating to what was – what was complied with and what is not complied with.

So I think – ja in August we got to that point and the activities now are really trying to sum up the PBL1 that Armscor is interested in.

**CHAIRPERSON:** So if you look at Armscor’s view of what requirements have been complied with and what requirements still have to be complied with what is the projection of when all the requirements that Armscor regards as important to be complied with are likely to be complied with?

10 **MR MLIPHA:** Chair there are serious requirements that are not complied with as we heard that have been put on the table to be discussed with higher authorities but at my level on technical level these are critical requirements that are not met and we have at least now with the contractor agreed that these are not met whereas in the past we were not agreeing.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** That – that gives me the impression that it is not known when all the requirements that Armscor regards as important will be met?

20 **MR MLIPHA:** I am...

**CHAIRPERSON:** That is from your point of view?

**MR MLIPHA:** Chair I am careful maybe to speak...

**CHAIRPERSON:** I can see you are very careful. But I just want to have an idea this is something that should have happened by 2012



**MR MLIPHA:** Yes.

**CHAIRPERSON:** I mean in a different work stream or – of the commission I was dealing with certain government issues relating to communications and certain set boxes were supposed to be you know installed in houses or something supposed to have been done already in 2008 or thereabout and by last year that program was nowhere near.

So now I am coming across another one where some things – you know all the requirements should have met in  
10 2012 and we are in 2020.

**MR MLIPHA:** Yes.

**CHAIRPERSON:** So I am wondering whether it is just one of those where there is just no light at the end of the tunnel as to where it will end.

**MR MLIPHA:** Chair the reason why I am careful is because I do not want to...

**CHAIRPERSON:** You do not want your superiors to...

**MR MLIPHA:** And also the contractor has maybe made mention that they have exhausted their efforts so they are  
20 coming to declare what they have achieved and – so that is why I am saying.

**CHAIRPERSON:** Ja.

**MR MLIPHA:** As early as August we have reached now an agreement of what we know.

**CHAIRPERSON:** Ja okay. No that is alright. Mr Kennedy.

**ADV KENNEDY SC:** Thank you Chair. Now Mr Nkosi you mentioned earlier that there was a risk for Armscor in relation to making payments at specific stages. Am I right in understanding that you – that what you were saying was that there were changes brought about by PBLA which would have the potential that Armscor would have to pay for something before enough progress had been made or enough deliverables had been – had been delivered. Is that and I may be oversimplifying it and I apologise if I am. Is my  
10 understanding correct?

**MR MLIPHA:** That is correct unless you want me to elaborate.

**ADV KENNEDY SC:** We will deal with an elaboration in a moment. Has Armscor in fact – has the risk materialised? In other words has Armscor in fact been paying what might be regarded as prematurely in that it is paying too much up front for something that still has to be delivered?

**MR MLIPHA:** That is correct that is my stand point.

**ADV KENNEDY SC:** Yes. And but Denel has benefitted from  
20 that?

**MR MLIPHA:** In the sense that they were saying they do the work and they have to be paid – yes that is correct Chair.

**ADV KENNEDY SC:** Yes. Now I would like you please in paragraph 15.5 you say on page 21:

“I will now identify specific instances where

the tailoring with the system acquisition management process by DLS has resulted in a risk of delivering the Hoefyster Project”

That is the project itself.

“Increasing and you will support each item identified with evidence that includes internal memorandums, payments, emails etcetera.”

And you then proceed to give your various examples of why you reach that conclusion. Correct?

10 **MR MLIPHA**: Correct Chair.

**ADV KENNEDY SC**: Now just before – I am not going to take you through all of the individual example or instances that you give but just explain to us why would this delive – why would this increase the risk of delivering the Hoefyster Project itself?

Is it not just a question of Armscor is having to pay a bit early but if they get the items does it really matter? The Hoefyster Project will still be delivered. Or is it actually a more serious problem?

20 **MR MLIPHA**: Chair it becomes – Chair it becomes a serious problem if I can make example of one. If for example we do an audit prematurely – an audit of an item that we say is now ready to proceed into the next phase of the lives of the acquisition process.

Let me make example of a physical configuration

audit. If we audit the physical item and say this is now the one before it has finished its development life we run a risk of repeatedly checking or auditing an item that is still evolving in its development life. That is one of the issues for an example.

**ADV KENNEDY SC:** Now may I take you through some of the instances that you have identified in your affidavit? On page 21 you set out reviews and audits paragraph 16 and you give us one of the instances 16.1.1. system requirements review. Now just explain to us please what the purpose is of the system requirements review?

**MR MLIPHA:** Chair the system requirements review is the review that if I can sum it up is the review that says you – one has the – the contractor or the developing – the developing agent understands the requirements that have been contracted to them. And they will endeavour to achieve them. So this review really goes into detail of saying you have captured all the requirements; there are no requirements that are missed. That is the essence of this system requirements review.

**ADV KENNEDY SC:** And you then refer in 16.1.1.2 to your having realised something as recently as 2018 DLS was developing the product to meet its badger development specification not the Armscor specification?

**MR MLIPHA:** Chair this is true. I prefer to speak in pictures

because it is much easier. At a higher level there is – there is a requirement specification and the developing agency – the contractor has to meet these requirements.

And now in meeting these requirements a developer will maybe say okay they will compile their own specification which they will name a development specification that says each requirement is going to be made in this manner. This is what they will do.

Now with regards to what I am stating here is that  
10 when that was done as recently as 2018 in one of the reviews I learnt that Denel informed us that they are not DLS; they are not developing to meet the Armscor spec – bless you Chair – they are developing to meet the Armscor spec but the development specification.

This to me was an issue in the sense that obviously there would be a delta between the two and we must now make sure that this delta is covered in the sense that if the contractor is saying, I am only meeting my specification; yours you must now check whether having met the  
20 development specification you are satisfied as Armscor. That was for me the issue.

**ADV KENNEDY SC:** Right thank you. Then if we may turn by way of another example to paragraph 16.2 page 25 to 26.

**MR MLIPHA:** Yes.

**ADV KENNEDY SC:** Physical Configuration Audit PCA.

Chair I am afraid there are – there is more and more acronyms that keep coming up but I suppose that is the modern way.

**CHAIRPERSON:** Yes, no I have seen there are quite a lot.

**ADV KENNEDY SC:** Just explain to us again in layman's terms if you would – lay people's terms PCA?

**MR MLIPHA:** I shall attempt. The PCA Physical Configuration Audit is an audit that says this bottle of water if I can – is – is made to contain so much water and it does  
10 meet with requirements that were set out. So the PCA in essence is an audit that is done after having achieved the functionality that is required.

It is an audit that leads one into saying now you may build more or make more of these items. So actually it is an outcome of an industrialisation process not a development process. An audit that is applicable to the development process is the functional configuration audit for reasons I have explained earlier I say that if one would be concerned of doing a physical configuration audit on an item that is still  
20 evolving in its development life one is not achieving much because the contractor would be allowed to change the design if the requirement is not met.

**ADV KENNEDY SC:** Now if I can take you please Mr Mlipha to paragraph 16.2.2 just read out that paragraph please.

**MR MLIPHA:**

“I have reviewed the PCA’s which were conducted by DLS and it was noted that all PCA’s are planned and conducted sequentially incorrect. This defeats the purpose of a valuable PCA where there is no value in the configuration as the design is still evolving.”

**ADV KENNEDY SC:** Now so DLS – DLS’s PCA’s are – have been done in an incorrect way. Incorrect if we can go back  
10 to the idea of the PBL1 and the PBLA.

**MR MLIPHA:** Yes Sir.

**ADV KENNEDY SC:** What has been adopted by the parties themselves not just Denel but Armscor as well by adopting the PBLA is Denel complying with PBLA in relation to the sequencing and planning and conducting of these PCA’s?

**MR MLIPHA:** Chair they would not be in the sense that the PCA that would be done for PBLA – PBLA is a point or a base line where functionality has not been achieved or requirements have not been achieved. So for one to be  
20 interested in those PCA’s in my opinion not everyone will differ with me – in my opinion defeats the purpose.

**ADV KENNEDY SC:** What I am really asking for is; is the problem that you identify in 16.2.2 the incorrect planning and sequencing of the PCA’s by Denel? Is that attributable to the fact that the PBL was tailored to become PBLA or is this

a separate problem?

**MR MLIPHA:** It is both Chair. It is not – it is also attributable to that but also it is a problem in the understanding of the – the engineering sequencing and the essence of auditing something that is not yet fully developed.

**ADV KENNEDY SC:** Now you say in 16.2.3 the following:

10           “The number of PCA’s contracted and planned is 54 which were expected to cost a total value of R110.5million and a number of conducted and paid out PCA’s is 36 and they have cost R100 771 000.00 etcetera.”

What is the – what is the point that you were trying to make there? Why is that – what is the significance and effect of this?

20           **MR MLIPHA:** The significance of what I am trying to highlight here is that firstly it was before the PBL1 as per contractor language or PBL as per Armscor language. It may have happened also before or after PBLA but what I also highlight is that so much money has now been exhausted in auditing something that does not have a product base line in Armscor’s understanding.

**ADV KENNEDY SC:** And who bears the cost of that? Is it an unnecessary cost to Armscor or Denel or who?

**MR MLIPHA:** Chair I am careful with this because it is



contracted but technically if you ask me it helped – it did not help me.

**ADV KENNEDY SC:** And you refer in 16.2.4.2 a memorandum internally at Armscor where you have raised the issue of the value lacking PCA's which have been conducted on the Hoefyster Project. Is it correct that you in fact have raised this particular concern and many others that you refer to by way of example in your affidavit?

**MR MLIPHA:** That is correct Chair.

10 **ADV KENNEDY SC:** And your annexures also bear out that you have sent various memoranda and emails and so forth?

**MR MLIPHA:** Correct Chair.

**ADV KENNEDY SC:** Yes. Have you reached a resolution within the organisation – within Armscor?

**MR MLIPHA:** Yes Chair I received support from my immediate superior with particular to this one where he also agreed to say this is not in line.

**ADV KENNEDY SC:** Who is that?

**MR MLIPHA:** Mr Dave Erasmus.

20 **ADV KENNEDY SC:** Erasmus?

**MR MLIPHA:** Yes.

**ADV KENNEDY SC:** Right. But is it correct that you have not reached unanimity within Armscor? There are different views.

**MR MLIPHA:** At – yes – yes correct Chair.

**ADV KENNEDY SC:** Right. I have skipped through a number of the other examples that you have given is there anything specific that you feel is of major importance that you would like to highlight to the Chair before we move off these examples?

**MR MLIPHA:** Would it be pertinent to mention the – the critical design review?

**ADV KENNEDY SC:** The critical?

**MR MLIPHA:** Design Reviews the CER.

10 **ADV KENNEDY SC:** Yes.

**MR MLIPHA:** The review.

**ADV KENNEDY SC:** Yes where do you deal with that here?

**MR MLIPHA:** I see it is..

**ADV KENNEDY SC:** Is that 16.1.4 at the foot of page 22 going onto the next page? Is that what you referring to page 22 to 23?

**MR MLIPHA:** Yes.

**ADV KENNEDY SC:** Right just explain to us what these critical design reviews involve?

20 **MR MLIPHA:** Chair this is also one of the points that are – of contention in the sense that when one reads the standards or when one looks at RSA-Mil standard 3 I hope Chair has a picture of the process one will see that the CDR is pictorially painted close to PBL.

One who maybe does not read the wording may

understand that this review is conducted to close out the development phase meaning that it is the last review before achieving PBL which is not correct.

The CDR as the word says it is the critical design review but when one reads the definition of it it is very easily for one to understand that – to misunderstand that they are talking of production. Whereas the critical design review is – is referring to the permission to build now the test item that will undergo testing.

10           Now the words that are used at times there is fabricate – permission to fabricate. Now one may misunderstand it and think it is now talking – it is now permission to go into production whereas no it is not that. It is just permission to – to build the test item.

Later we show it is – that is what we would call an engineering development model. That is the one that will face now qualification.

**ADV KENNEDY SC:** Alright. Then in paragraph 17 on page 27 to 28 you deal again with the PBLA not existing in the  
20 RSA-Mil standard 3. You appear to here be referring to the point we have already dealt with that PBLA does not appear in the RSA-Mil standard 3 document but tailoring is permissible. It was agreed to with Armscor. Your problem though with the PBLA is that it has increased the technical, financial and other risks in relation to this project. Is that

right?

**MR MLIPHA**: Correct Chair.

**ADV KENNEDY SC**: Right thank you. I am going to just touch very briefly on paragraph 18 the training system. What does this relate to? You are referring in the text here to a training simulator just explain to the Chair why you have dealt with this in your affidavit? What is the concern that you have raised here in relation to training simulators?

**MR MLIPHA**: Chair as part of the complete project with all  
10 elements that have to be delivered it was stipulated in the contract that there should be a training segment. Now the training segment includes – in fact the contract also stipulated that there should be a training simulator.

A training simulator Chair is a training tool. It is a tool that enables one to train on a replacement product instead of the actual product. In this case they computerise it, they make it out of computers and it is listed in the contract what they are supposed to deliver.

The issue that I tried to raise here is that though one  
20 is supposed to deliver these training tools the training requirement as a whole – the training system is not limited only through a training tool but one should address the whole requirement regarding training.

And at the time when – very early on when I was also asked to be a Project Manager for one of the variants I had

an issue that the contractor was going straight into simulator building without really compiling as I said earlier there is a requirement and there is a development specification that says how one will meet these requirements. This training development spec was not there. In fact it was compiled much later. That was my one issue.

And then the second issue is that these training tools, the simulators were now running far ahead of the actual product.

10 Now one has – will have a problem that now you have to correct the training tool if the product is still – to a point that the tools – the simulators are delivered.

**ADV KENNEDY SC:** Okay thank you.

**CHAIRPERSON:** Yes Mr Kennedy.

**ADV KENNEDY SC:** Thank you Chair. Paragraph 19 is headed PBL has not been achieved. Again I am not going to go into the detail of this. Here are you referring to PBL1 or PBLA it is not ...[intervenes]

**MR MLIPHA:** Sorry, Mr Kennedy. We are ...[intervenes]

20 **ADV KENNEDY SC:** Paragraph 19, page ...[intervenes]

**CHAIRPERSON:** Page 20.

**MR MLIPHA:** Yes. Correct, yes.

**ADV KENNEDY SC:** And you have set out your reasons for saying that. And then you say:

“There are differences of view on the part of DLS.

They believe TBL was established in 2016.”

**MR MLIPHA**: Correct, Chair.

**ADV KENNEDY SC**: Okay. Now again, just briefly, could you sum up your evidence relating to paragraph 20 from the foot of page 32.

“Concessions and deviations used as a means of justifying non-compliance.”

Who is non-complaint?

**MR MLIPHA**: Chair, requirements, if they are not met, we  
10 classify them as non-compliant. Now what transpired. Until recently when it was addressed with the help of our management in support, was that..

It is my understanding that whenever Denel was facing challenges of meeting the requirement, they would put in a deviation. People would differ with me. It is my opinion.

Now, deviations were used in a way of reaching an end to say now they meet the requirement. Now in normal language, deviation means you are not... its otherwise of what you are supposed to get.

20 However, in engineering it is that but it also means that one must... whenever one requests a deviation. Firstly, one should request a deviation before testing. If you do it after testing, it is now after the fact.

And if you request a deviation, it is also understood it is temporary. It is not a permanent state to say now I am not

required to meet this requirement or because I got a deviation, I now meet the requirement.

That was the strange understanding. And that is what, in essence, I am trying to explain to say. Deviations were used in a way of saying they meet the requirement.

**CHAIRPERSON**: Does that mean they were deviations which were supposed to be exceptions were, ended up being regarded as the norms?

**MR MLIPHA**: You can put it that way, Chair.

10 **CHAIRPERSON**: Yes, yes.

**MR MLIPHA**: Yes, yes. You can put it ...[intervenes]

**CHAIRPERSON**: Because they are supposed to be exceptions.

**MR MLIPHA**: Not only ...[intervenes]

**CHAIRPERSON**: Not all the time.

**MR MLIPHA**: Not only... if I check... if I may check, Chair? Exceptions, yes, as you put it that it is just for this instance.

**CHAIRPERSON**: Yes.

20 **MR MLIPHA**: You are expected to correct this issue and come back and meet the requirement.

**CHAIRPERSON**: Okay, okay.

**MR MLIPHA**: Ja.

**CHAIRPERSON**: Okay.

**MR MLIPHA**: H'm.

**ADV KENNEDY SC**: Now Mr Mlipha, may we then turn to

paragraph 21? That refers to industrialisation. And industrialisation is particular stage. Is that correct? Once development test and evaluation has been successfully completed.

**MR MLIPHA**: You may call it that Chair.

**ADV KENNEDY SC**: Yes.

**MR MLIPHA**: Phase is the correct term.

**ADV KENNEDY SC**: The phase?

**MR MLIPHA**: Yes.

10 **ADV KENNEDY SC**: Thank you for the correction.

**MR MLIPHA**: H'm.

**ADV KENNEDY SC**: Now is there a problem in relation to this aspect of the Hoefyster Project and the relationship between Armscor and Denel?

**MR MLIPHA**: Yes, Chair there is a problem in this issue because for one to industrialise, you would want to industrialise a product that has met the requirements. Now if one would industrialise a product that has not met the requirements, you run the risk of repeating the ...[indistinct]

20 [laughing]

**CHAIRPERSON**: You must help me now in case I have missed this somewhere. Industrialisation would mean what in a lay person's language in this context?

**MR MLIPHA**: Apologies Chair.

**CHAIRPERSON**: H'm.



**MR MLIPHA:** Industrialisation means in, for example, in this type of this project, you have to now set up a factory. You have to set up production lines ...[intervenes]

**CHAIRPERSON:** Oh, okay.

**MR MLIPHA:** You have to train or you have to get process engineers that will build the ...[intervenes]

**CHAIRPERSON:** So if we go back to the example you gave earlier on of the bottle... this water bottle.

**MR MLIPHA:** Yes, Chair.

10 **CHAIRPERSON:** That is something you do after you have go ahead that the bottle needs all the requirements for the purpose for which it is made?

**MR MLIPHA:** Chair, you ...[intervenes]

**CHAIRPERSON:** Now you can go and make more bottles because you have to make them in accordance with these requirements or specifications.

**MR MLIPHA:** Chair, you are absolutely correct.

**CHAIRPERSON:** Okay alright. Okay continue. You are dealing with industrialisation and I interrupted you because I  
20 just wanted to make sure I understood what it means in paragraph 21.1.

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

**CHAIRPERSON:** You might need to remind you of Mr Kennedy of the question he was dealing with because I interrupted him now.

**ADV KENNEDY SC:** Yes, thank you. So in relation to industrialisation, is there an issue currently between Armscor and Denel as to industrialisation?

**MR MLIPHA:** Chair, there is an issue. In fact, Denel approached Armscor and they said they would like to declare both the product baseline and at the same time confirm industrialisation on the enter production.

Now at one particular meeting, I asked the question to say it cannot be. And in particular, with regards to the  
10 vehicle hull that if there are now industrialising and preparing to build many, what floor are they building or what product? Because we have not verified everything.

Ja. Yes, so there is that dispute and... Yes.

**ADV KENNEDY SC:** May I ask you now please Mr Mlipha to look at paragraph 22 which refers to the manufacturing baseline.

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

**ADV KENNEDY SC:** Is manufacturing baseline different from the concept of the industrialisation phase or are they  
20 the same?

**MR MLIPHA:** The baseline is a culmination of the industrialisation phase.

**ADV KENNEDY SC:** And you refer in paragraph 22.2 to a criticism that make you of DLS.

“It is establishing two baselines at the same time,

termed hitting two birds with one stone.”

Which of the two baselines? The manufacturing baseline and what else?

**MR MLIPHA**: They were referring to the product baseline, PDL and the MBL.

**ADV KENNEDY SC**: And were they suggesting that the two should happen at the same time?

**MR MLIPHA**: Yes, they said the two have been achieved.

**ADV KENNEDY SC**: Have already been achieved?

10 **MR MLIPHA**: Ja.

**ADV KENNEDY SC**: And you then... your paragraph 22.4 says to this date, the project has not reached the PDL, let alone the MBL.

**MR MLIPHA**: That is correct, Chair.

**ADV KENNEDY SC**: And you say that the MBL must come after the PDL?

**MR MLIPHA**: That is correct, Chair.

20 **ADV KENNEDY SC**: Okay. Now I would like, if I may, to deal to just touch on the next paragraph, the Patria vehicle selection. You have referred in some of your paragraphs here to the testing and deficiencies and shortcomings in relation to the Patria vehicle not passing the Landmine Protection Hull Tests in the year 2005. You were not involved or were you?

**MR MLIPHA**: I was not involved Chair, yes.

**ADV KENNEDY SC:** Yes. And the Chair has already heard evidence earlier today from Mr Nkosi in relation to that. Is there anything specifically that you want to raise that you believe is particularly significant for the Chair to know, bearing in mind that he will have the opportunity to read all the detail of your affidavit in this regard?

**MR MLIPHA:** Chair, the essence goes with the requirements that were set out from the onset and the fact that this requirement – in fact, it is split into two.

10 It is at a lower level, it refers to a hull or and wheel detonation as we have heard previously. That the hull or the shell of the vehicle should not rupture and hit... a landmine hit under a wheel should also not result in a rupture.

Then the second level of requirements refers to the crew survivability when the vehicle is exposed such a threat. It is a requirement that the crew should survive. It is a requirement.

So that for me is the essence of it. And then when one now goes into the criteria or the criteria that was set from...  
20 as part of the contract to say which is a critical criteria.

A critical criteria is to be understood as that criteria that one has to meet and not meeting that requirement, the person should be disqualified.

And from reading evidence that is presented or that we had to do as also part of my work of the requirement

verification and thorough work and seeing that with authenticities achieved here.

One observe that the first test for this landmine was failed as you heard earlier Chair. Now at that instance, it is my understanding that because it is a critical criteria, that there should not have been any progress.

**ADV KENNEDY SC:** Thank you, Mr Mlipha. May I just touch on one final aspect before we end our questions of you. Can you turn please to page 408?

10 **MR MLIPHA:** 408. Four, zero... Ja, 408.

**ADV KENNEDY SC:** Do you have that?

**MR MLIPHA:** I have it. I have it, sir.

**ADV KENNEDY SC:** This is headed with the Armscor logo and the heading is Functional Configuration Audit Report, Project Hoefyster. And under summary, the heading summary, it says:

“This document contains the functional configuration audit results of the requirements baseline for Project Hoefyster conducted in June 2020.”

20 It is dated... the date of issue is August 2020 and your name appears on the following page 409 at the top. Is that correct? As having been prepared by you.

**MR MLIPHA:** Correct, Chair. This is the document that I compiled recently.

**ADV KENNEDY SC:** And if I might just draw your attention

to a couple of passages. Page 416.

**MR MLIPHA**: 416?

**ADV KENNEDY SC**: Yes.

**MR MLIPHA**: Yes, I am there Chair.

**ADV KENNEDY SC**: Just before we look at the text that appears there. What was the... what is the purpose of the document and basically, what were you trying to achieve in undertaking this audit and setting out the report?

**MR MLIPHA**: Yes, Chair. As I assumed that you have the  
10 acquisition process in front of you. Firstly, the functional configuration audit is a document that is an input to the audits that is conducted by Armscor Quality Division.

It is an input to that audit, QES. They refer to Quality Engineering Services. Because that division will say that the baseline is indeed correct and has been established.

The issue ensued when the contractor was stating that they have audited themselves and they say they are good. Now I think it is understandable that one cannot audit oneself because you will be biased in auditing yourself.

20 So then as part of the reviews, we said as the minimum – because referable there should be an independent body that audits. As the minimum, we will compile an audit that we will share with the contractor and inform them this our official position.

That is the reason why I compiled the document. It is

now not the norm... [cell phone ringing] Apologies Chair.

**CHAIRPERSON**: [No audible reply]

**MR MLIPHA**: Sorry Chair.

**CHAIRPERSON**: [No audible reply]

**MR MLIPHA**: It is not the norm for one to... for Armscor to write audits and share with the contractor. QES Division gets involved and does that.

But because of the technical disagreements that were happening between us, Armscor and Denel, I felt it  
10 important, together with the Armscor Team, that let us compile a report.

And audit the report and share with them that this our position, official position, so that we could inform our leadership to say this is where we stand.

This document I compiled with the permission. I informed my immediate manager and I informed also the leaders to say we as the project, we will write the report.

And we share it with the contractor and the contractor did not object heavily to it. Yes. That is the history of this  
20 document.

**ADV KENNEDY SC**: Thank you for that. I just want to take you to two brief references in that body of your report. Page 416.

**MR MLIPHA**: 416, yes. Yes, Chair.

**ADV KENNEDY SC**: Yes. Half or two thirds way down the

page, your report says Appendix A contains detailed breakdown of the score by Tables 1, 2 and 3. 4.1.1.1 – Observation.

“Development was conducted against an updated batch of development specification which was no longer in line with the contracted development specification, SU3. Corrective action, DLS was advised to reflect their development against the contracted batch of development specification.

10 3. Observation. Most deviations were requested after DLS had failed to meet requirements implying that these deviations were applied for after the fact.”

Is this the reference to your earlier evidence in this regard?

**MR MLIPHA**: It is correct Chair. This is now as a summary of what now had been happening over the years and to say now we are putting it in this audit report. And just showing to them that this is what we will compile in our report. Yes.

20 **ADV KENNEDY SC**: And then the other examples I would just like to take you to. Page 417, the next page, non-compliance.

**MR MLIPHA**: Yes. Yes, Chair.

**ADV KENNEDY SC**: You refer there to catastrophic. And did you make any findings in your audit report as to whether there were any catastrophic non-compliances on the part of



Denel and DLS in particular?

**MR MLIPHA**: The outstanding requirement with regards to crew protection liability and others... I do not know if am at liberty of going into the detail of the requirements?

**CHAIRPERSON**: Mr Kennedy will ask you a few things. The details are important. Ja, continue.

**MR MLIPHA**: Okay.

**CHAIRPERSON**: H'm.

**MR MLIPHA**: Yes, there are requirements that are critical  
10 and may result in catastrophic outcomes. So yes, those definitions, I included there as a means of guiding everyone. Because we had to now guide everyone to say what is meant by catastrophic events, what is meant by a critical event that... et cetera.

If the product is not meeting such a requirement. If the requirement is of a critical of catastrophic consequence, what does that mean. For an example, the crew survivability in the event of a landmine threats.

Now the details surrounding that issue is that the  
20 contractor does say that they were not contracted for TP3 as you heard earlier Chair.

Now it becomes a bit problematic for my side, technical compliance, in the sense that now, now will we address this crew survivability requirement? Because...

**CHAIRPERSON**: These vehicles cannot be used if there is

that risk.

**MR MLIPHA**: How do... Yes, Chair.

**CHAIRPERSON**: Yes.

**MR MLIPHA**: How do we – what do we say?

**CHAIRPERSON**: What do you do with them? What is the purpose of having them?

**MR MLIPHA**: Yes, Chair. What do we say.

**CHAIRPERSON**: H'm.

**MR MLIPHA**: [cell phone interruption] Sorry, Chair. Yes.

10 Well, then the contractor said they... Since that requirement is not yet contracted, they are willing to do the test but they want that requirement to be contracted now to say ...[intervenes]

**CHAIRPERSON**: But what would have been the... would there have been a useful purpose for these vehicles to be manufactured if they would not meet that requirement? I mean, how do you get into a contract for the manufacturing of those vehicles without including that requirement?

20 Or is the position that it is so obvious that even if you do not include it, the manufacturer should never think that they should build or manufacture vehicles like this without that requirement because it is such a fundamental requirement. Or what do you think is the position?

**MR MLIPHA**: Chair, the position from the contractor is this. They have met the first lower level requirement as you heard

earlier of protection against hull breach anywhere under the vehicle or wheel shots. They have met that one.

The TP3 is that requirement that is now equivalent or will verify the crew survivability. Now if it is not done, how would one then now say the crew inside the vehicle is okay?

Because we have not done this test to really see if, for example, items that are mounted inside the vehicle are dislodged and they become projectiles towards passengers that they hit them.

10 Or as earlier, you heard that there even may be even be skewered by or stabbed by certain... Because one must appreciate the environment that one is in. It is a very confined environment inside the vehicle. So ja, I...

Chair, when you asked me that, I also do not know what you say because it is such a critical requirement. Although, I must highlight Chair that as part of negotiations, contract negotiations way before I was involved. It was stated that a TP2 test would be used to validate the vehicle.

20 Now as you have heard earlier Chair. A TP2 test is a lower, is of a lower level and may not be used to really confirm that the crew is safe inside.

**CHAIRPERSON:** Could it be said that a vehicle that has been manufactured without meeting that requirement is fit for purpose? For the purpose for which these vehicles are made?

**MR MLIPHA:** Chair, I would be careful to say that without objective evidence supporting that.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** So I would be inclining to say ...[intervenes]

**CHAIRPERSON:** You cannot...

**MR MLIPHA:** One must be careful then.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** Yes.

**CHAIRPERSON:** But you... It is possible that some people  
10 might think it would not be properly fit for purpose. But  
maybe others would say it is fit for purpose.

**MR MLIPHA:** Yes.

**CHAIRPERSON:** It is like there is room for these different  
views.

**MR MLIPHA:** You are correct Chair.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** There are divided camps.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** And the fact of the matter is that when we  
20 look at requirements clinically, there is that requirement who  
would say this requirement has not been verified for crew  
safety.

**CHAIRPERSON:** But even those who might say it is fit for  
purpose. In saying so, they would not be... they would have  
to accept that there is a serious risk to the passengers.

**MR MLIPHA:** Yes, Chair you are absolutely correct.

**CHAIRPERSON:** Yes.

**MR MLIPHA:** There is a serious amount of uncertainty.

**CHAIRPERSON:** Ja, ja.

**MR MLIPHA:** Yes.

**CHAIRPERSON:** Okay alright. Mr Kennedy.

**ADV KENNEDY SC:** Thank you, Chair. A final question from, if I may Mr Mlipha? What has happened to this audit report that you have prepared?

10 **MR MLIPHA:** Chair, as I mentioned that Denel, DLS responded obviously with objections and I did inform them that we... I accept their objections in particular the reference to the landmine that they are not contracted to it.

But as the report says, then that we are sitting with the dilemma of not being in a position to classify the vehicle in terms of safety or not.

And we are leaning more towards saying that one has to be careful as you heard from Mr Nkosi. And that is where the report is and the intend of the report, as it is stated  
20 earlier, is that it will be submitted to the...

It is an input to the QES audit. And once it is received by that division, they will then consider everything that is on the table and they will make a decision.

**CHAIRPERSON:** The purpose of the report is to state your position and people may have... other people may have their

own views about the issues that you cover in the report but it reflects your position.

**MR MLIPHA**: Correct, Chair. Amongst others, for example, compliance. The compliance... The contractor was saying, they achieved 99% compliance against our requirement. As you see in the report, we disagree with that.

And we went into numerous workstations where we have now, for example, we removed all those, the compliances which the contractor said they complied because they have  
10 deviations.

**CHAIRPERSON**: Okay.

**MR MLIPHA**: Ja.

**CHAIRPERSON**: Okay, ja. Alright.

**ADV KENNEDY SC**: Thank you, Chair. We have completed the questions we wish to put to this witness.

**CHAIRPERSON**: Thank you, Mr Kennedy. Thank you very much, Mr Mlipha for coming to assist the Commission. We appreciate it very much. If we need you to come back, we will ask you again but thank you very much. You are now  
20 excused.

**MR MLIPHA**: Thank you, Chair.

**CHAIRPERSON**: Thank you. Mr Kennedy.

**ADV KENNEDY SC**: Chair, we are at a stage now. It is quarter to five. We do not have another witness immediately available.

**CHAIRPERSON**: Ja.

**ADV KENNEDY SC**: We initially planned in the original schedule to have somebody to follow today.

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: But there has been an issue which I would like to raise with you in chambers.

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: In relation to some logistical problems.

**CHAIRPERSON**: Okay.

10 **ADV KENNEDY SC**: May we put you on that score?

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: And then ask in the meantime that we adjourn for the hearing to resume tomorrow?

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: We have scheduled three witnesses tomorrow. Would it be perhaps... I cannot remember Chair if you indicated the starting at ten o'clock would be a problem for you tomorrow because ...[intervenes]

**CHAIRPERSON**: I think that ten o'clock will be a problem.

20 But I have indicated that tomorrow to sitting until beyond five might be a problem.

**ADV KENNEDY SC**: Yes.

**CHAIRPERSON**: But I think as I see this situation now, we could sit up to six tomorrow.

**ADV KENNEDY SC**: Yes.

**CHAIRPERSON:** So there is room for that unless something changes.

**ADV KENNEDY SC:** Thank you, Chair.

**CHAIRPERSON:** So in terms of starting let us start at ten.

**ADV KENNEDY SC:** At ten.

**CHAIRPERSON:** But there is a possibility of being able to go up to six if necessary.

**ADV KENNEDY SC:** Thank you, Chair, we will ...[intervenes]

10 **CHAIRPERSON:** If we have to – if you cannot go beyond five we will adjourn at five but in that event I would be willing to explore the possibility of starting quite early on Friday.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** And when I say quite early, depending on everyone's situation, maybe started at even half past eight.

**ADV KENNEDY SC:** On Friday?

**CHAIRPERSON:** On Friday.

20 **ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Half past eight or nine, depending on where we will be because on Friday also we need to – we will not be able to use the whole day because of my commitment.

**ADV KENNEDY SC:** Yes.



**CHAIRPERSON:** So we could explore how early we could start.

**ADV KENNEDY SC:** Certainly, Chair. On tomorrow's situation, if you – I know you have other commitments and challenges later in the afternoon.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** And there are other counsel involved as well, I know.

**CHAIRPERSON:** Ja.

10 **ADV KENNEDY SC:** We are amenable, if it suits you, Chair, to start early tomorrow perhaps at nine o'clock if that suits you and that may give a bit more flexibility for your other commitments but we are in your hands.

**CHAIRPERSON:** Yes. No, tomorrow morning we cannot start before ten.

**ADV KENNEDY SC:** Okay.

**CHAIRPERSON:** But on Friday we could start earlier than ten. If there are problems obviously in the afternoon for counsel to be here beyond five or thereabouts, so even if I  
20 am available we will accommodate counsel.

**ADV KENNEDY SC:** Thank you, Chair.

**CHAIRPERSON:** Ja, okay, alright. So the witnesses for tomorrow, who have we got?

**ADV KENNEDY SC:** Mr Drevin, he is a programme manager of DLS. Mr van den Heever, also from DLS,

Production Planner, and Ms Carene Geldenhuys who was at the time – she was still employed there, she has left, she was then the DVS Legal and Commercial Executive. So they will deal with specific aspects of the DLS or the DVS procurement processes.

**CHAIRPERSON:** Okay. No, that is fine.

**ADV KENNEDY SC:** Thank you, Chair.

**CHAIRPERSON:** Okay, we will adjourn for the day. We adjourn.

10 **INQUIRY ADJOURNS TO 29 OCTOBER 2020**

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