

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

16 APRIL 2021

DAY 376



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Recording & Transcriptions

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DATE OF HEARING:

16 APRIL 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 16 APRIL 2021

(There is no sound for the first minute and 37 seconds.)

ADV VAS SONI SC: Chairperson is to put the relevant parts of the affidavit to Montana and ask him whether he accepts what he said or denies and if he denies what the basis of the 00:01:42.

CHAIRPERSON: Just one second. The lighting does not seem to be very good. So if somebody could do something about it. Okay alright ja they will attend to it. Yes, yes Mr
10 Soni.

ADV VAS SONI SC: Chairperson then we would like to start with the affidavit of Mr Molefe – Mr Montana Mr Molefe's...

CHAIRPERSON: Oh and if you are ready to start at least Mr Montana should...

ADV VAS SONI SC: Oh should be sworn in I am sorry.

CHAIRPERSON: Do the oath ja or affirmation. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

20 **MR MONTANA:** Tshepo Lucky Montana.

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

MR MONTANA: Not at all.

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

MR MONTANA: Correct. That is correct.

REGISTRAR: Do you solemnly...

CHAIRPERSON: I am sorry okay let us start afresh. I – if you could speak up a bit I did not hear the answer. I need to hear the answer.

MR MONTANA: Sorry Chair I am too tall the system is just a bit – sorry about that.

CHAIRPERSON: And you – and it is – I think it does not come out so you cannot raise it. No but that is fine just try
10 your best – oh okay. Okay just start afresh Registrar.

REGISTRAR: Please state your full names for the record.

MR MONTANA: Tshepo Lucky Montana.

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

MR MONTANA: No.

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

MR MONTANA: I do.

REGISTRAR: Do you solemnly swear that the evidence
20 you will give...

CHAIRPERSON: I am sorry I did not hear that answer.

MR MONTANA: I said I do Chair.

CHAIRPERSON: Oh okay thank you. Yes continue.

REGISTRAR: Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing

but the truth; if so please raise your right hand and say, so help me God.

MR MONTANA: So help me God.

CHAIRPERSON: Thank you Mr Montana; you may be seated. Yes Mr Soni.

ADV VAS SONI SC: As you please. Mr Montana you have heard what I have said to the Chairperson about the approach we intend adopting. I want to start with the affidavit of Mr Molefe first you will find it in Bundle D which
10 is in a file in front of you.

MR MONTANA: Thanks Chair Mr Soni you – you probably have been interacting with the commission in the last few days and I requested I think on Monday I requested the opportunity to make a statement.

I received an email yesterday I think it was just after lunchtime in the afternoon I thought I just going to make – jotted comments at the beginning before we start Chair and I was told that no you can – you can make your statement but if you – if you submit that and I think I have
20 been in interaction with your team and sent them email even in the early hours of this morning Chair because I think – Chair I think there has been a lot said about the – about PRASA, about me and I think it is more than fair that I be afforded opportunity to – to address a few things that are of concern to me.

Chair I have honoured notwithstanding the fact ...

CHAIRPERSON: Just one second before you proceed Mr Montana. I did hear that you might wish or you would wish to make a statement. I think I have been told there is a statement but I have not had – I have not actually seen it. It might have been sent to me but I just have not had time and I have not read it. I normally want to see it if it a written statement so that I can satisfy myself that it is not going to implicate people who have not been notified and
10 so on. So – so I assume you have got the statement Mr Soni?

ADV VAS SONI SC: We received it – I received it a few minutes ago Chairperson.

CHAIRPERSON: Oh okay.

MR MONTANA: It is about 98 pages.

CHAIRPERSON: Yes.

ADV VAS SONI SC: I just looked at it very quickly.

CHAIRPERSON: Yes.

ADV VAS SONI SC: So I do not...

20 **CHAIRPERSON:** You have not had a chance to...

ADV VAS SONI SC: I have not even...

CHAIRPERSON: Ja.

ADV VAS SONI SC: Except for the fact that it is from Mr Montana I know nothing about it.

CHAIRPERSON: Ja. Is that more or less correct it is

about 98 pages?

MR MONTANA: Chair indeed. I – the intention is not to read the full statement. Chair you would recall that I have raised numerous concerns about the process that we have embarked upon.

CHAIRPERSON: Ja.

MR MONTANA: At the commission.

CHAIRPERSON: Ja.

MR MONTANA: And Chair I think let me say that the
10 commission told me I think it was at five past two yesterday that if you want to make a statement it must be a written statement submitted. And I submitted it – it is true because I had to sit down and write the statement in the early hours of this morning. And I know Chair that the procedure is very important.

CHAIRPERSON: Yes, yes.

MR MONTANA: (Speaking in vernacular) Chairperson.

CHAIRPERSON: Yes.

MR MONTANA: That...

20 **CHAIRPERSON**: Especially (speaking in vernacular).

MR MONTANA: Indeed Chair indeed Chair. So I think I would appreciate Chair I promise I am not implicating anyone.

CHAIRPERSON: Yes.

MR MONTANA: Beyond what I would have said in my other

affidavit that is the subject of discussion and debate between myself and the commission.

CHAIRPERSON: Well just before you proceed Mr Montana both you and I have just said some things in a language other than Isi-Zulu we need to share with everybody so you must start to say what you said in Isi-Zulu or is it Isi-Xhosa then I will also say what I said. I will put it in English so that nobody thinks that we do not want some people to understand what ...

10 **MR MONTANA:** Chair I am not sure if I can try.

CHAIRPERSON: (speaking in vernacular).

MR MONTANA: (speaking in vernacular) I can translate Zulu I am Pedi.

CHAIRPERSON: (speaking in vernacular).

MR MONTANA: (speaking in vernacular).

CHAIRPERSON: Maybe ...

MR MONTANA: You are better placed Chair.

CHAIRPERSON: Maybe in a friendly you meant you are asking in a friendly way you are not fighting.

20 **MR MONTANA:** In a respectful manner Chair.

CHAIRPERSON: In a respectful way. Yes, yes.

MR MONTANA: That we may not have – because of the time.

CHAIRPERSON: Ja.

MR MONTANA: That I have received. Chair I mean let me

be very frank.

CHAIRPERSON: Ja. Maybe before you do that let me say also what I said I simply said in Isi-Zulu that especially because he had just taken the oath literally translated what he said was he was asking in a – what is it – church spirit literally you know or...

MR MONTANA: (Speaking in vernacular).

CHAIRPERSON: It is meant – it is meant to say in a respectful way. So I said particularly because he had just
10 taken the oath. That is what I said. You – you are – I get the impression that you are now saying well because that statement we have not read and it is long one needs a lot of time. I am suspecting you want to say can you just be given a chance to say a few words. Is that correct?

MR MONTANA: Indeed.

CHAIRPERSON: And are not going to implicate anybody.

MR MONTANA: Indeed – indeed Chair I will appreciate that indeed.

CHAIRPERSON: Yes. Five minutes?

20 **MR MONTANA:** No Chair.

CHAIRPERSON: Ten minutes?

MR MONTANA: Chair I think we – I thought you were working on averages of thirty minutes Chair for...

CHAIRPERSON: No I – no I have been – I think I cannot say that I have been definite with everybody but generally

speaking it has been between ten to fifteen minutes maybe twenty but if somebody says I know so and so he went to thirty then maybe that might be happen but most of the time it has been ten, fifteen, twenty minutes. Is that fine?

MR MONTANA: Chair no I think that is fair I will respect that.

CHAIRPERSON: Okay alright.

MR MONTANA: Thank you.

CHAIRPERSON: No that is fine I will allow you. I will take
10 your word that you will not implicate anybody. Thank you Mr Montana you may make your – your remarks.

MR MONTANA: Thank you Chairperson, Deputy Chief Justice for an opportunity to address you today. It was in my initial application Sir to address a wide range of issues facing our country here today that is beyond the challenges of PRASA.

Those of us we had the opportunity to serve in government, in leadership positions. I think we have got the duty when we come here not implicate other people,
20 not to attack other people, not to deal with the real issues facing the country and I think in the course of my testimony today I wish to do that.

Deputy Chair – Deputy Chief Justice behind the story of PRASA there is a story about our people. It is a story about the possibilities that we have as a country.

And I think it is very important that we – we ready to take time to discuss it. I know that a number of issues have been made. I have expressed my reservations. I have made the statement Deputy – Deputy Chief Justice that I find the commission biased. I find the commission pursuing a predetermined agenda and I want to put those on record today.

What I mean by that because I think it is very important and let me put on record that I had serious
10 reservations Advocate Soni. When I received this particular summons because – because I would be having an on-going battle with the commission. I have prepared an affidavit.

My interaction with this commission there is nothing to do with the allegations made by Mr Popo Molefe, by Ms Ngoye and Mr Ollerman.

I wrote to the Chair on the 26th of July 2019 asking for an opportunity to testify highlighting a whole range of issues that I intended to address. Chair the commission
20 came back to me at that time they wanted to curtail my evidence. They wanted me to take some parts that deals with the appointment of Werksmans Attorneys and a whole range of investigators.

I followed the commission very closely Chair and I have taken issues with a number of – with the way in which

the commission has addressed issues and I again respectfully Chair you said in one of the statements that there will be a time when we have to sit and face each other to – face each other ...

CHAIRPERSON: I am sorry. You want to say something to Mr Montana?

ADV VAS SONI SC: I just wanted him to adjust his microphone.

CHAIRPERSON: His mic okay alright.

10 **MR MONTANA:** Thank you Mr – thank you. Thank you Advocate thank you.

CHAIRPERSON: Thank you.

MR MONTANA: And Chair I – I think that the issues that I wanted to raise relates to how the commission and I am afraid Chair that some of the issues that I want to raise relates to some of the comments that the – as Chair and you know it was a difficult thing. I said how do I say this without – tell the truth, be forthright whilst at the same time respecting the Chairperson and respecting this
20 particular commission.

Chair let me – let me indicate that the way in which as a country with these 00:13:50 state owned enterprises and public enterprises that there are successes and failures I think serves as a constant reminder of our collective national side.

We are quick to find fault and apportion blame as a nation. We tend to engage not to engage seriously and think deeply about the rest of the issues facing our country today.

We as a nation we – we speak loud (African language) but we are hesitant to fight or even frown upon the deep inequalities and the indignity of the majority – that the majority of our people are subjected to.

We seem to be a nation defined by short memory,
10 forgetting who we really are and where we come from. We seem to be a people that fail to recognise that we are bound by our history and that we have a common future and that is why you see others think they can come to the commission and score a victory over others.

Chair I think that this commission has got an important role for our country. It is beyond – it has a choice to either depend a conflict and the divisions in our society or lay the basis for united and a prosperous future for all South Africans.

20 We are a nation that refuses to – to accept that we are first and foremost an African country and Chair we fail to understand our position. We are – I always say we are a nation at war with each other.

Chair there is – the notion of state capture it finds resonance with our – with this national side. It is our

psychosocials psychological and emotional makeup which define our - we respond collectively when we hear and that is why in South Africa there is news every day. But the responses have been very short term in nature and not strategy.

I think we have made many gains Chair as a country I think that our SOE's in particular; key SOE's and public entities they have played a major role and they are being destroyed today.

10 If we look at PRASA Chair PRASA has made major gains over the last ten years within a very short space of time however those gains have been reversed within a period of three years and more specifically after I had left PRASA.

We have invested as a country over R100 billion to change the face of public transport. Today we have nothing to show for the massive investment in our railways and – and no serious discussion oh no this is how we got to where we are today. Just under three years.

20 Infrastructure and I am referring Chair to between 2018 and today we have over an infrastructures estimated over R30 billion that has been destroyed and part of the reason Chair is because we chose that we – security contracts are irregular we are going to cancel them and the result has been the infrastructure has been destroyed in

the country.

So we are a country that is prepared to lose R100.00 to save R1.00 Chair and that is why we see all our things are falling apart in the country.

Chair – and this does not only affect PRASA it affect our national airline. I can go on and on and on about South African Airways. I can go on and on about Transnet, Eskom and all of those things.

All what has been said here in this commission
10 Chair is actually not the totality of our experience and reality of our country.

Deputy Chief Justice I will add Chair and ask you that we leave at – we look at our history in the round. We fail to build on our strengths as a country. There are massive resources and capacity represented by key SOE's and public entities like Eskom, Telkom, ACSA,

Transnet and PRASA itself and many others are being daily destroyed because we fail to understand these are important instruments in the hands of a democratic
20 government to drive economic transformation. We change the wellbeing of the people and to withstand the storm so prevalent in our world.

Chair you know the 00:18:14 of state capture and are many and in my affidavit that this commission has yet to accept have been able to elevate the meaning of

irregular to becoming to mean criminality and corruption.

That is not correct Chair. The truth is irregularity is not seen as much with corruption. Indeed the irregular expenditure and a poor control environment create a favourable condition for fraud and corruption. There are instances where irregularities are a direct result of corrupt practice however irregularity in itself does not con – does not constitute corruption.

And I want to make that point very strongly and
10 debate it in this commission Chair. When the Minister of Public Enterprises Pravin Gordhan and our National Director of Public Prosecutions Chair Shamila Batohi speak of billions lost to state capture they are not referring to corruption or stealing money but they actually draw figures from irregular expenditure.

As a nation we are now using irregular expenditure as a barometer to measure corruption. Our courts in my view Chair seem to have fallen into this trap. We have created an unfortunate picture of South Africa as an
20 extremely corrupt nation. We are saying it everywhere including our – our delegations go to devils when we are at international forum. We even say that we are the most corrupt 00:19:45 investigate.

Even – even the Chairperson has been making statements about the leadership of the country being

serious about fighting corruption. I ask the question Chair is this factually correct? And how do we feature or should we be feature – should we feature among the most corrupt nations in the world?

If we make a distinction you would actually realise that we need to make it ten because Chair we truly live in the age of madness in my view.

South Africa and her people will never be able to dream big and take both initiatives to transform our
10 country. As long as the dominant narrative about our country is informed by the false notion of state capture.

Our country is in desperate need of political business, the ritual and community leadership which will confront the real problems facing our country and the continent including addressing the history or demands of the black majority in our country.

A leadership which accept that we shall not have meaningful freedom and sustainable growth when the economy fails to mobilise into productive activity 70% of
20 his greatest resources.

Nelson Mandela said the greatest resource are our people. The country needs a leadership with the courage to make the break with a structure of the economy inherited over 100 years ago that breeds massive unemployment, poverty and inequality.

It is a leadership that recognise and or that should abandon the very notion of state capture and how it is destroying the very fabric of our own society.

Chair both in my statement as well as in my affidavit that I put before the commission I detail exactly this so that I can substantiate it.

Chair when on the 26th I wrote – I wrote the – to you requesting for an opportunity to help – to assist the commission in its work I was more than happy and this
10 followed the decision of the African National Congress the ANC that is members and members of the public should cooperate with and assist the commission in its work.

Well I must also put on record Chair that whilst I followed that I think that the ANC is not paying attention to the workings of this commission because this commission is very important.

It is not about DCJ Zondo, it is not about people who testify it is about the future of our country and therefore that balance because today we can use the
20 commission to chase others tomorrow because of the nature of society and the changing political dynamics others will be chased and I think that is very important.

Chair let me just highlight a few things that I – I take specific exception with some of the things that the Chairperson again with the utmost of respect Chair – it has

taken me two years before I come to sit before the Chair and this is not because of my own making it is because this commission has tried at every stage of the path to – to undermine everything that I have submitted Chair.

But let – I want to elaborate on the - on the – on what I call bias and a pursue of the predetermined agenda by this commission. Chair and this is based on evidence and I think you would recall Chair again in (African language) to the commission (African language) but I think
 10 that less tell certain truths that make me actually upset. (African language) sitting with my own family and listening to some of the things being said by the commission or its Chairperson.

Let me deal with the first one Chair. I think that the Chair dealt during the testimony so Popo Molefe, Martha Ngoye and Fana Dingiswayo on the matter of the – of the directorate for priority crime investigation and the national prosecution authority and the various PRASA investigations the Chairperson was so vociferous.

20 At some stage Chair you even told your people to meet after – after in your chambers you even said cleaned all the money if he has gone home let them call 00:23:49 when you are done.

I have done each and every Chair I have got with me the clips of each and every hearing that the – that you

have done.

Chair I - I urge you to have a serious look at these things because I think that you will realise when you are alone or when you write your report that these were grossly unfair. Actually they suggested that this commission is captured and let me indicate Chair what I mean by that.

Chair the – the – you said that there is corruption, evidence of corruption and you – and Chair at some stage you nearly hit the Chair. The DPCI and NPA were not
10 willing to act. Chair I want to say today this is factually incorrect.

The – PRASA had requested and this is part of the evidence by annexure that I – that I brought to the commission. PRASA had requested the DPCI to prioritise the Swifambo as well as the Siyangena investigations.

The DPI did exactly that Chair but when the DPCI ask and again it is black and white in the correspondence between the two organisations asked for evidence not what PRASA presented in the civil case but for a criminal
20 investigations both Popo Molefe Matangoye failed to deliver that evidence because it does not exist Chair and if it was delivered Chair I want to say it was not delivered here because I listened to all of theirs.

They made statements and Chair I find it quite extraordinary that – that if we are committed to justice it

means therefore that you must hear both sides in this thing and then make a determination.

Chair this thing was not presented here I want to argue that and I think that the Chair and excuse me for – for the word that I will use because that is not the word you use but for lack of a better word the Chair blasted the DPCI as well as the NPA.

Chair you know it is a sad state of affairs if the Chair had looked deeper into the decision you actually
10 have realised that what was happening Werksmans Attorneys with Popo Molefe were actually trying to influence the DPCI and the NPA.

They actually took a company one of the companies contracted to them and they said to the HAWKS you guys do not have the capacity to investigate what is called complex investigation. They did that because they wanted to write a script that Lucky Montana and others we must manufacture evidence inside the HAWKS itself.

And Chair when I was – when I listened to your
20 comments I was so angry. I was seething Chair because I say Deputy Chief Justice is actually undermining the very independence of the – of – it may not have been intentional Chair but is undermining the very independence of both the DPCI and the NPA and the ability to prosecute without fear of him.

The HAWKS terminated the – their engagement with Howard when they realised that in fact this company was contracted to Werksmans it was doing both sides and trying to influence it.

Now Chair if we talk about justice your comments are actually strengthening Popo Molefe's hand and Werksmans in them trying to force the HAWKS. I think Chair actually – I wrote in my statement I think it is actually not only unfair conduct but I think that it is
10 actually unlawful in my – in my view.

Chair it is one issue and let me also inform you – Deputy Chair – Chief Justice it is not only those charges. They told you about only charges that relates the charges that they have made. There were charges and in my statement I provide even case numbers.

I opened a case in Hillbrow where I show that Popo Molefe, Martha Ngoye paid what you call South African fence and gate irregularly and that money ended in the – some of that money ended in the – in the foundation trust
20 of Popo Molefe.

CHAIRPERSON: Remember the promise about not implicating.

MR MONTANA: Indeed Chair I – (African language) on this unfair thing because I think that is the crux of the thing.

CHAIRPERSON: Ja okay.

MR MONTANA: Sorry – sorry Chair I will move this piece. Chair that money ended in my affidavit I asked the commission please subpoena the accounts of Popo Molefe because he – Popo Molefe has been one of the best witnesses here, the most preferred witness of this commission.

If you calculate the amount of time when before the – the lockdown Chair you ask Advocate Soni here you said him, how much time do you want with this witness? He
10 said thirty minutes. He went to a four days Chair he had – he had four days and he was called across beyond PRASA itself. Popo Molefe had the most amazing time here.

Yet this commission is revisioned to ask about all the unlawful things that he has done some of them we have laid charges.

I have opened a case at Brooklyn police station. Chair this commission did something other than the NPA the manipulation on the NPA matter – HAWKS and the NPA matter. Advocate Soni says to me here today he wants me
20 to respond to the issues raised by your own investigator and PRASA 00:29:37.

Chair really Advocate Soni we know that this commission never did an investigation on this matter. Never even in – came to – they never even gave – gave me the opportunity to come and speak. This commission took

a 22 page affidavit written by Mr Paul O'Sullivan 00:30:03
at Brooklyn police station suddenly it is preliminary report
of the commission.

Chair how do we respect the commission? Mr Soni
himself he is sitting here highly conflicted. I do not know if
he disclosed to you Chair that he in fact had written an
opinion for Werksmans. Mr Vincent Maleka is no longer
with the commission I am not sure Chair but when you look
at issues about irregular *ad-hoc* contracts he did an
10 opinion.

Now we come here the commission tells me take out
stuff about Werksmans but its own evidence leaders – its
own investigators are conflicted on this – on these
particular matters.

Chair I will not go much into details

CHAIRPERSON: Yes, yes.

MR MONTANA: But I think that I find the commission
highly – highly compromised because these issues is not
just – I mean there are instances which shows Chair. I
20 know people have said ask for the commission for the
Chair to recuse himself.

Chair for me I am raising issues I do not even want
here I am happy that you are Deputy Chief Justice you are
chairing this commission. But also I am saying Chair like –
and we always say that when someone is in a position of

leadership, a position of authority and this would be my final point it is God and it is those who have given birth to you – (African language) and (African language) but none Chair I am a child of somebody.

I am born, I am a son of Karee Stephen Matlala (African language) these are people who gave birth to me and they hear this commission making serious attacks on me Some of them so factually incorrect and I think during the – throughout the – this testimony and answering
10 questions I will be able to do that.

Chairperson (African language) and this – these are not cowards. Both Bakoni Matlala (African language) these are warriors Chair in history and their blood in my blood veins here are not cowards. It is the Matlala's, it is the Kekana's, it is the Montana's.

Chair and I think that we should be – and when we deal with these issues I want to show this commission but this – this affidavit that I placed it defines Chair the starting point. Not because I do not respect you Chair I do
20 not respect the Advocate Soni but I think a lot of things I am going to take them head on based on the evidence and I hope that the commission will treat me with the kind of fairness and give me the space in the same way that you have given Popo Molefe in particular.

For all the hearsays he was not there when PRASA

did all this work Chair so I put that Chair as an opening statement and hope that we will deal with some of the issues in the course of the – of the conversation.

Thank you Chair.

CHAIRPERSON: Yes. Thank you Mr Montana for largely not really implicating anybody. I just want to say to you that I commend the fact that whatever concerns you have with the commission, its legal team or investigators or even with the Chair you have articulated those concerns I
10 believe in a constructive manner and – and I have not seen anything destructive or disrespectful in the manner in which you articulated your concerns.

We as a commission should be open to people articulating their concerns about us. This is a very deep and important commission. It has got many people, men and women who are quite committed to its work would invest that they fair but we – it would be wrong to – for us to think that we never err – that we never make some mistakes or that everything we say will always be
20 understood in the way we intended.

We – I certainly accept that sometimes I may say something intending one meaning and it might be understood in a different way.

So I hear what you have said all I can say to you is I am very keen to hear all sides. I am very keen to hear

different perspectives about matters. When I gave judgment in the – or a ruling in the matter of the application by Mr Ajay Gupta for leave to cross-examine some witnesses and I dismissed the application one of the things I said was if they were to come back I would grant them leave to cross-examine.

I had no doubt about that as long as they complied with the rules. I am very keen to hear particularly persons who are implicated in a very serious way. I want to hear
10 their side of the story before any findings can be made. And where they do not participate it is a pity because I would really prefer to have all – everybody's perspective.

So I can assure you that there is no predetermined outcome I have on anything but I respect everyone's view but certainly I can assure you of that.

I can assure you that I am looking at all evidence. I may at a particular time think along certain lines on something but it does not mean I have made a finding. When I hear another side I am still open to saying oh but
20 that was not right.

So – so – but I – I am happy that you are here. I am happy that you – you are ready to deal with issues and whatever concerns you have you have articulated and you have articulated them in a manner that is constructive as far as I am concerned.

So – so we will continue. I must just say this because maybe I will not – I might forget you made reference to your affidavit that you sent last year I think ...

ADV VAS SONI SC: Sorry Chairperson I have been asked to ask you to put your mic at the centre they are not being able to record – I am sorry.

CHAIRPERSON: Oh okay.

ADV VAS SONI SC: I am sorry.

CHAIRPERSON: No I am used to people saying my voice
10 is loud and 00:39:04.

MR MONTANA: But voice Chair.

CHAIRPERSON: So – so I just want to say about that affidavit Mr Montana because I did read it – the whole of it. It contained a number of things that I was very interested in and I can tell you now and I shared this with Mr Soni then that the impression I had after reading that affidavit was that it appeared that you had taken a decision to really be helpful to the commission. That was the impression I have – I had and I shared it with Mr Soni.

20 There are a number – there are many matters that you deal with in that affidavit that I think are very important and as you know the commission I determined a date when I wanted you to come and testify early in January unfortunately there were issues about annexures and so on but I just want you to know that that is the impression I had

after reading that affidavit and I want you to know that there are a number of matters in that affidavit that I was very interested in.

Indeed the legal team had gone to the extent of even sending the affidavit or portions thereof to implicated persons even though the annexures were not there because the idea was they wanted as I understood it to expedite matters.

So I thought it is important to mention that so that
10 you know it and – and of course there were challenges about the – there were challenges that we all know – know of. So – but I thought that that is – that is all I wish to say.

But I must also maybe say that you will have noticed that the issue of the – of Werksmans has been brought to the commission and that is because in part because your raising of the matter made it possible for one to say let us have a look because he – he raises this issue he feels strongly about it. So it has been brought to the – to the commission and – so I just mention that.

20 Okay let us – oh you want to – yes Mr Montana.

MR MONTANA: Indeed Chair. Chair I think we should – we should proceed but ...

CHAIRPERSON: Yes.

MR MONTANA: But I am actually pleased to hear Chair that in respect of the matter of the affidavit because this

was the issue that I was going to raise today that I prepared an affidavit and it recalled that my affidavit was not prepared in response to any allegation.

Popo Molefe testified in March eight months after I have approached the commission after I had given the commission and I said I want to assist the commission with information that I know in my role in government from public enterprises when we restructuring all the state owned enterprises to transport and my life in PRASA and I
10 said I am willing to do that Chair.

The problem with the summons today is that it invites me – my affidavit has not been admitted as evidence and we know the commission has spoken Chair about my annexures and I will not drag the issue but I just want to put it on record.

Chair the – when I submitted my affidavit as I have said I think you have seen it is a 447 page affidavit and I said I do not want to burden this affidavit I will submit my annexures separately and I think I worked to the
20 commission. They came to my house to collect all the papers. Every number links to – oh and the annexures links to the issues that are there.

The commission has said to me no but these things are not properly marked or numbered and I said no, no it is fine let me work with the commission so that we correct all

the – what you saying is not properly marked or numbered so that – the commission said to me Chair you did not use what you call it established practice – the format that we use. And I asked Chair can I have this format so that my annexures are in line with what the commission requires?

It has taken me over three months and I have realised that not such format exists Chair. So I am pleased Chair that I think that your words are assuring, that you have looked at the commission and Chair I am not
10 raising the issue of Werksmans and to talk about irregularity.

In fact the conclusion of my annexure I – because this impact on our – on our democratic dispensation as a country and I say in my - in my affidavit there in my conclusion the work of this commission would be incomplete without it looking deeper because it is not about irregular and fraudulent expen – appointment.

It is Chair about the fact that I submitted this evidence, a lot of reports that shows that Werksmans and
20 the companies working with them have actually based their reports including those that they have given to the HAWKS through irreg – unlawful surveillance activity.

My house has been broken a number of times. My son nearly died. So these are matters of life and death but is the – the matter we discuss of the HAWKS and NPA

actually shows the extent to which democratic institutions can actually be manipulated to achieve nefarious goals as it were and that is the spirit in which I am raising the Werksmans issue.

But Chair thanks very much that you have said you will have a look at it and I am hoping that the commission will engage me so that go deeper because in each and every – after every paragraph I put an annexure to support.

You ask Chair finally you ask some of your
10 witnesses here Mr Koko the commission ask him Mr Koko why do you interact with is it Regiment Capital when the contract is with McKinsey or whatever it is called?

CHAIRPERSON: Or Trillian.

MR MONTANA: Or Trillian.

CHAIRPERSON: Not McKinsey – McKinsey.

MR MONTANA: Exactly those parties Chair.

CHAIRPERSON: McKinsey ja.

MR MONTANA: But that was the point that Advocate Seleka took on here with Mr Koko. You will see Chair
20 when we say Werksmans has been paid R350 million we actually refers to companies that are not contracted to PRASA but who are contracted by Werksmans.

Some of them their job simply to chase after me, break into my houses so that they can try to find anything that they can – so that I can be prosecuted through what

you call manufactured charges and trumped up charges
Chair.

So I am glad that we open up this thing then we are
dealing with the real state capture that we should be
looking at Chair. Thank you.

CHAIRPERSON: Well let me say this about your affidavit.
Because of where we are in terms of time for the
commission I do not know if much can be done if the issue
of annexures were to be fixed but I would be – I would be
10 very happy if they would be a way to sort out that issue of
annexures because as I say your affidavit has a lot of
things that I think are very important that this commission
would like to look into.

It is just a pity that we are where we are in terms of
time you know. So I would be very happy I know that
between yourself and the commission maybe certain things
have been said and all of that but maybe a discussion that
we have been having this morning maybe it might just open
the way or an attempt to try and sort that out (African
20 language). Mr Soni you remember the phrasing (African
language).

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay. In a spirit of cooperation and
without fighting and so on so – so – because then once
that has been fixed one can apply one's mind to what can

be done with it at the time where we are. Okay alright. Thank you. We are at six minutes to eleven I wonder whether we should just take the tea break now and then – so that when we come back we go straight up to lunchtime?

ADV VAS SONI SC: Yes

CHAIRPERSON: Maybe we should do that.

ADV VAS SONI SC: Chairperson may I place something on record?

CHAIRPERSON: Yes okay.

10 **ADV VAS SONI SC:** I am not going to...

CHAIRPERSON: You –

ADV VAS SONI SC: I am not going to deal with other matters that Mr Montana has raised. Mr Montana says I am conflicted. As the – an officer of court and I accept this is not a court but in general I am deeply conscious of not involving myself in activities that might involve a conflict.

So I want to place on record I have never been briefed by Werksmans Attorneys in any matter involving PRASA or Mr Montana. This is not the first time Mr
20 Montana has raised it. He has raised it with journalists who communicated with me and out of concern I wrote to the lead counsel of the commission Mr Pretorius and placed on record.

CHAIRPERSON: Ja.

ADV VAS SONI SC: What the position is and so let me do

it now because it will form part of this record.

CHAIRPERSON: And you told me.

ADV VAS SONI SC: I did as well Chair.

CHAIRPERSON: Ja.

ADV VAS SONI SC: I have never been briefed by Werksmans Attorneys in respect of either Mr Montana or PRASA ever before or after the commission. I was briefed by Werksmans once about fourteen/fifteen years ago in a matter in Durban it was a commercial matter it had nothing
10 to do with PRASA.

In regard to PRASA one matter on which I was briefed was a matter in which I was asked to give an opinion on whether criminal charges could be brought against Mr Montana.

I am surprised that Mr Montana thinks that that disqualifies me because that opinion said that given the position Mr Montana occupied he could not be criminally involved. But it had nothing to do with anything that the commission is in.

20 And Chairperson when I came to the commission I was not aware of what stream I would be fitted into

CHAIRPERSON: Yes.

ADV VAS SONI SC: But I just want to assure you Chairperson, public at large and perhaps Mr Montana if he is open to persuasion that I am not conflicted at all.

CHAIRPERSON: Ja, no, no that is fine. Let us take a – the tea adjournment now so that we do not start stop, start stop.

ADV VAS SONI SC: As you please.

CHAIRPERSON: We take the tea adjournment now and after that we will go up to quarter past.

ADV VAS SONI SC: As you please.

CHAIRPERSON: Eleven and then we will resume at quarter past and then continue. We adjourn.

10 **ADV VAS SONI SC:** As you please Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV VAS SONI SC: As you please Chairperson.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Chairperson there is Mr Hotz from Werks – Werksmans he wants to place something on record. He asked me to place – to indicate to you Mr Hotz from
20 Werksmans.

CHAIRPERSON: What is that we are supposed to start with the witness evidence now.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Mr Hotz what is that? Put on your mic. We have been meaning to commence with the witness'

evidence. Somebody will help you.

ADV HOTZ: Thank you Chair. Chair in light of the proceedings this morning I merely wanted to alert the Chair unfortunately our senior counsel could not attend this morning but I wanted to place on record Chair as you would be aware that Werksmans has indeed applied to the Chair for permission to cross-examine Mr Montana.

Obviously we – we are in your hands Chair as to how and when but I merely wanted to place on record that there
10 is that application Chair.

CHAIRPERSON: Okay no that is fine. At some stage I – it would be dealt with there are a lot – quite a number of applications for leave to cross-examination that are being finalised so – okay alright. Thank you. That is – yes Mr Montana.

MR MONTANA: Chair I – I unfortunately I represent myself as well on the legal side.

CHAIRPERSON: Yes, yes.

MR MONTANA: But Chair I think I would – I would also take
20 legal advice on this issue. I have welcomed the – when the commission alerted me to the fact that Werksmans wants to cross-examine I said no I welcome in fact there are a lot of things that the – I think that it would be good for them to cross-examine me. Chair but they – they can do that only on the basis of my affidavit.

CHAIRPERSON: Yes.

MR MONTANA: I am here to reply to respond.

CHAIRPERSON: No, no they are not going to do that today.

MR MONTANA: Yes, no Chair I accept that.

CHAIRPERSON: Ja.

MR MONTANA: But I am saying even procedurally.

CHAIRPERSON: Yes. Yes.

MR MONTANA: It is on the basis not of my response to Mr Popo Molefe but it should be under basis of my affidavit
10 which is not the statement. So I think – I think Chair we will deal with it at the right time.

CHAIRPERSON: Yes.

MR MONTANA: And I will take legal advice once you have made your decision Chair.

CHAIRPERSON: Yes well put it this way if you – if subject to issues of time and condonation if you did not previously file anything in relation to it having read what they wrote in support of the application you might when you take legal advice get advice as to whether there is anything you should
20 put before me before I make the decision. Okay alright. Mr Soni.

ADV VAS SONI SC: As you please Chairperson. Just one more housekeeping. Mr Johan Van Loggerenberg who was mentioned in Mr Montana's affidavit asked me to place on record that he is here – he is not represented but he just

wants to place on record that he is in fact here.

CHAIRPERSON: Oh was he mentioned in the affidavit?

ADV VAS SONI SC: In the affidavit.

CHAIRPERSON: That we – is not being used today?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Oh as long as he is advised that it is not being used today.

ADV VAS SONI SC: Yes. Yes.

CHAIRPERSON: Okay alright thank you.

10 **ADV VAS SONI SC:** Mr Montana can I just explain what I want to do today and it can either be fast tracked or it can be a slow process. Mr Molefe has made a number of allegations against you in his affidavit. I want to look at the relevant parts or the relevant paragraphs of his affidavit and ask you whether you deny or confirm the correctness of what he said and anything you may want to add.

Okay I am going to refer to specific paragraphs and I hope you will not mind I will read them it just becomes easier so that the record is complete and your answer to that
20 question appears all in one.

Is that alright? I want to start with you will have ...

CHAIRPERSON: Let say first Mr Soni what bundle we are using.

ADV VAS SONI SC: Yes.

CHAIRPERSON: For the record.

ADV VAS SONI SC: Bundle D Chairperson.

CHAIRPERSON: PRASA Bundle D. Ja.

ADV VAS SONI SC: PRASA Bundle D.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And it is Exhibit SS6.

CHAIRPERSON: That – and that will be Mr Popo Molefe's affidavit?

ADV VAS SONI SC: That – that is so.

CHAIRPERSON: Okay alright. Yes.

10 **ADV VAS SONI SC:** Now have you got it Mr Montana?

MR MONTANA: I have got it thank you.

CHAIRPERSON: You can keep your mic on all the time Mr Montana.

MR MONTANA: Thank you Chair.

ADV VAS SONI SC: If you – we are going to look at page numbers and paragraph numbers. I will start off with page number the first page is page 3 it is the page on the top right hand corner in red.

MR MONTANA: On the top.

20 **ADV VAS SONI SC:** Page 3.

MR MONTANA: Top right.

ADV VAS SONI SC: Page 3 yes.

CHAIRPERSON: It will read 003.

MR MONTANA: 3 ja.

CHAIRPERSON: Ja.

ADV VAS SONI SC: So at paragraph 11 he says that he was appointed to the PRASA board on the 1st of August and soon thereafter he met with you in your capacity as Group Chief Executive, is that correct?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: He says you then congratulated him on his appointment and told him that the previous – that you had told the previous chairperson that you intended resigning as you had been with PRASA for many years and
10 that you still intended resigning in the future, is that correct?

MR MONTANA: That is correct Chair but the – that was not on our first – on our first meeting ja, but that is correct, you are right.

ADV VAS SONI SC: So can I just ask and it is on record but is it relevant that it was not at the first meeting?

MR MONTANA: It is relevant Chair because we – I think at the first meeting it was immediately after Mr Molefe had been appointed the whole board had been actually appointed by cabinet.

20 There was a cabinet statement issued and I then obtained his mobile number; called him to congratulate him and made arrangements to go and see him. He was playing golf at the Gauteng Golf Estate. He had arranged a venue – met there. I introduced myself. We spoke about the history – where we come from and how I know him particularly as a

young activist in the UDF in the 1980's and then I left – I gave him three documents. I said these are your bedtime readings. It is not the board induction we will have a board induction at the right time.

I gave him the strategy of PRASA what they call a corporate plan. I gave him some of the documents dealing with the – with our modernisation program and I gave him our document outlining our real estate strategy and that is how we parted ways. He says I will read and then we start
10 with the process and we will have an induction.

So the – the issue about me intending to resign I raise it of course a few months later and this is after Mr Molefe had said to me, you know we think got a new board you must sit with us one of the three years.

And I said no and there is a reason for that I think at a later – in the course of the conversation we will come to that Advocate Soni. But the reality is I said to him at that time that look I have been here for almost ten years.

My health is not good I want to step aside and
20 everything but there will be subsequent meetings where some of these things were dealt with but the – but – so that was not the – in the first meeting but it happened almost within the same – more or less the same time – timeline.

CHAIRPERSON: On a lighter Mr Montana you say you wanted to step aside or step down at that time?

MR MONTANA: I wanted to do both Chair step aside but I still have thirty days in respect of the step aside the rule Chair.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: And then in paragraph 12 Mr Montana he is – Mr Montana – Molefe says he responded by saying that PRASA was carrying out a major program of modernisation and the board would need you to remain and lead the team at PRASA to discharge historical past, did that
10 happen?

MR MONTANA: Chair indeed that – that happened. Mr Molefe had wanted me or rather suggested to me that I should stay at PRASA for another three years.

ADV VAS SONI SC: Right then in paragraph 13 he says and starting in the second sentence on the second line of paragraph 13.

“There is – PRASA was beginning its execution of an ambitious government program of modernisation.”

20 And then at paragraph 14 he goes on to say:

“That the cost of that was going to be R172 billion over a period of 4 – of 40 years.”

Is that more or less correct?

MR MONTANA: Chair the – the ambitious program to modernise our railways was of course underway at that time

when Mr Molefe arrived. The R172 billion investment would have been over a 20 year period and not 40 years. Over a 20 year period.

ADV VAS SONI SC: 20?

MR MONTANA: 20 ja not 40 years.

ADV VAS SONI SC: Then at paragraph 15 he says that:

“At the time his board assumed office most of the major programs which had – which ran into billions had already been concluded.”

10 Is that correct?

MR MONTANA: No that is correct Chair.

ADV VAS SONI SC: And then he says:

“The board asked you in your capacity as CEO to make detailed presentation on the status of the various contract – contracts including future contracts.”

Is that correct?

MR MONTANA: No Chair that is not correct.

ADV VAS SONI SC: The board did not ask?

20 **MR MONTANA:** No, no, Chair we had a – an induction program. This induction program addressed everything. It was addressed by – firstly by me – we welcomed the new board where I briefed the entire board on the strategy and we gave them two big files.

So the one on the strategy side summarising those

issues and the other one was address – were issues addressed on the – on the regulatory legislative side which was addressed by the Company Secretary Mr Lindikaya at that time.

ADV VAS SONI SC: I am just asking did that never happen that the board asked for presentations.

MR MONTANA: Chair I – in fact on the day he said that I was sitting here listening. I came especially for that and I want to say that it is a – and he said I refused to cooperate
10 with them. That is false Chair. How would I go and see the chairman at the golf estate, offer him documents about PRASA when we welcome him. And then a few months later I withhold documents. I – for me it did not make sense. There is no objective basis why I withhold this.

Chair let me say the PRASA modernisation program and I think that is...

CHAIRPERSON: Wait before you continue I wanted to say I was not sure whether he said you refused or he simply said you – you never provided the documents.

20 **MR MONTANA:** Chair even that is false.

CHAIRPERSON: Yes.

MR MONTANA: I had – we actually provided so much information if there is one thing is a weakness and you can see Chair I wrote these statements in the early hours of this morning. I provide information and – and there was no

reason because we – you see we were not involved in criminality. There is no reason for us to hide documents and do these kind of things.

So Chair it is not – his assertion is - is so incorrect – it is wrong and I do not know where – where he finds that – where he finds that – where or how he can make such a statement. He got all the information including regular quarterly meetings of the board.

I wrote detailed reports and annexures on issues that
 10 the board had to deal with. There are contracts of course – if we deal with one contract the rolling stock renewal program the R53 billion to replace the entire fleet of MetroRail.

I mean these documents are with lawyers it was – they were so big I do not even carry those documents. But they were accessible to the board.

Let me – let me hasten to add though Mr Soni Mr Molefe and I when we were invited to Parliament and I cannot recall the date now to brief and he has just joined
 20 PRASA to brief the Standing Committee.

CHAIRPERSON: Portfolio Committee.

MR MONTANA: The Standing Committee on Appropriation. It was chaired at that time by Mr – Mr Paul Mashatile. We went there; I briefed the committee; I presented to the committee and then he opened of course and said the CEO

will take us through a presentation. At the end Mr Molefe then in fact was saying – was talking about the rolling stock program more specifically that you know we have even investigated this matter and we find that it is perfect it is done in a proper way.

Now Chair I did not know that was in – it was being investigated. For the first time just three months of Mr Molefe – of Mr Molefe being in PRASA I heard in Parliament from his own statement that they have investigated this issue
10 and they are satisfied with the fact that this contract was done properly.

Chair when we deal with the Werksmans issues we are going to come to this particular issue. Mr – so it actually shows that the relationship in my affidavit I say there is a network and this I want to bring you to – to this particular network that has been in operation including the fact that they started investigating me when I was still at PRASA without actually even any board resolution – board resolution to that effect.

20 Chair I want to assure this committee I am – I have got my own shortcomings and the witnesses but I respect authority and that is why when Mr Molefe was appointed the first thing I did was to congratulate – to welcome him, congratulate him. It was not – I would have waited – I could have waited for the board induction when they came at

PRASA. I followed him to where he was and said Mr Molefe – I even told him that he inspires me Chair and I think he mentioned that point because the relationship with Mr Molefe even though he did not know me personally at that time but there is a long history to it which I think may not be relative at this – at this point in time.

Chair – Chair there is no reason why I would withhold any information from Mr Molefe for the board as they – as they were a properly constituted board of PRASA.

10 **CHAIRPERSON:** Yes Mr Soni.

ADV VAS SONI SC: As you please Chair. So we can accept that when Mr Molefe says that he asked for these you were not cooperative and he had to secure – he and the board had secure the documents as he says in the rest of that paragraph from the attorneys concerned.

MR MONTANA: Not on his.

ADV VAS SONI SC: That that is not correct.

MR MONTANA: Chair I want to say that is – and Mr Molefe knows he is probably watching this he knows that this – that
20 is not correct.

ADV VAS SONI SC: Okay. At least we know the areas of difference so ...

CHAIRPERSON: And – and it is not a situation where he might be mistaken about the timeframe where he locates that request – maybe it is a request that happened later because

I think your – you started by saying you – the request was not made, is that correct?

MR MONTANA: Chair.

CHAIRPERSON: But you said on your own you had provided a lot of documentation.

MR MONTANA: At my own initiative Chair.

CHAIRPERSON: Yes.

MR MONTANA: Chair let – let me say the relationship and I deal with this at length in my affidavit. My relationship with
10 Mr Molefe when he became chair between August until

CHAIRPERSON: 2014.

MR MONTANA: August 2014 until November – end of November we had a very good relationship. We had one on one meetings. Well then we had one on one meetings in fact most of the meetings were not even taken place at PRASA. They were taking place at his offices – he is a director of Lereko Investments which is based in Illovo and most of the meetings were happening there.

But Chair I will explain in the course of this – of this
20 testimony. I knew why Mr Molefe was there. You heard the testimony of – of former Minister of Transport Dipuo Peters, Mr Peters spoke about you ask a question to Mr Molefe in March you ask him what happened in the relationship, why things were good and why things turn bad?

Chair I do not know if this is the right time but I want

to help you understand, answer that question for you because both Mr Molefe and Mr Dipuo Peters did not provide you with the right answer.

CHAIRPERSON: Okay.

MR MONTANA: Outside in the streets Chair on a lighter note to say at that time it was the same Whatsapp group and then it went the other way pear shape and that is why we have the kind of problems that we are talking about Chair.

So he did – he did not make any mistake Chair he
10 just know that his assertions – his statement to the commission was not correct.

CHAIRPERSON: You must not forget I would like you to make an input on that question but maybe at the right time so – so you and Mr Soni – Mr Soni will also keep an eye as to when the right time would be.

MR MONTANA: (Inaudible).

CHAIRPERSON: So you can deal with it.

MR MONTANA: Thank you Chair.

CHAIRPERSON: Ja.

20 **ADV VAS SONI SC:** Then he says in paragraph 16:

“That there was a problem in that the 2014/15 audit indicted that there was irregular expenditure of more than R500 million.”

And that the Auditor General sorry if you look later in the

paragraph and the Minister and the board's audit committee had convened an urgent work shop to deal with these concerns.

Are you aware of that?

MR MONTANA: Chair you know sometimes when you do things as an afterthought because you want things to fit into each other you say things like that.

In 2014 we had a delay to our audited financial statement. Not because of management problems Chair no
10 because there was a huge issue between us and the Auditor General at that time. It had to do with the locomotives.

As you know the locomotives Chair we are going to talk at length about that. The locomotives were – were – Chair we unlike the commuter trains which we build a factory but the locomotives 88 of them but we ended up contracting for 70. They have to be built in Spain and I know there has been a lot of debate about whether we should have built them or not I think at the right time again I will deal with that issue Chair to show the issue of public interest.

20 We never faced this challenge about the R500 million. Chair when I was at PRASA and I know that Mr Molefe painted a picture – he does that at the end of his paragraph as an organisation that is dysfunctional, that has got weak controls or non-existent and many individuals deployed in strategic positions lacked the required skills to

adequately fulfil their roles.

You know this PRASA I do not know Chair. I was at PRASA I was CO for nine consecutive years. We have never had a qualified audit when I was at PRASA. This was not conveyed to this commission and that is very important because there may not have been – have been – there may have been audited financial statements and annual reports and the Auditor General making certain findings but when the audit was delayed in 2014 the Auditor General said to us we
 10 want to travel to Spain to go and verify the components that have been bought and everything and see how they should be treated in the accounting – in the statements of PRASA. Okay – that is what the Auditor General said.

We then agreed; we prepared for the trip. The Auditor General then came back to change its position and said no we want PRASA to treat the Swifambo transaction as a pre-payment together with the other rolling stock program and if you do not do that we will disqualify – we will disqualify oh sorry we will qualify the financials to PRASA.

20 This was towards the end and this board has just joined. This workshop that the Chair is referring to is actually the first induction workshop and it is at that meeting that we indicated to them that we may need a special agent Audit and Risk Management Committee of the board to meet to deal with this particular issue.

So when I read and listened to Mr Molefe sitting there; up there manipulating these facts to convey to the commission that we have got this dysfunctional entity. No that is not PRASA Chair.

The PRASA that we – that we formed and I played a leading role in this establishment had major problem there because our railway system was falling apart. But I will tell you Chair that when I was CO of PRASA some of my former colleagues are here if a train does not move old – this old
10 trains and I do not get the satisfactory response the management knew that I will act. They know that I will fire them and ask them to say let us get them to the trains in the early hours of the morning so that we can deal with the real business of this organisation.

So Chair this picture that is being presented here that the commission should look at the – at these entities as being – you know if there is one entity that I think South Africans notwithstanding its many challenges should have been proud of. I think one of them should have been PRASA
20 and take out Montana there and deal with this entity and I think in my statement I detail some of the things that we have achieved and I deal with what happened the period after.

So Chair we never heard. I only appeared to in SCOPA once Chair on each 00:24:02 irregular expenditure.

That was in 2013 I think and there the amount was R32 million Chair – R32 million in 2013 and this amount had nothing to do with theft of money. It is a fact that PRASA because of financials – cash flows could not pay the Municipalities in time and they charged interest. The Auditor General said to us because you are paying and you are paying with interest we will then treat that – those interests as irregular or wasteful expenditure.

I had to go and explain it to SCOPA.

10 2014 the financial year the irregular expenditure was only R100 million Chair – only R100 million. What happened is that the R500 million had to do with – and I had left PRASA that time when they finalised in July I left on the 15th the board and management had then to finalise the financials Chair. They ever go to the prior year. I was outside PRASA when I hear about R500 million which then was included into that thing which was used as a justification for the irregular appointment of Werksmans Chair.

20 So again you know – you know Chair the extent to which Mr Molefe I think that when you – when I listen to the testimony of Ms Dikeledi Magadzi the current Deputy Minister of Transport and a former chairperson of the Portfolio Committee on Transport when you listen to the testimony of Martha Ngoyi – sorry Chair not Martha Ngoyi I am sorry I was talking to her just now that is why she is – of

Dipuo Peters you actually see that in fact the evidence of Mr Popo Molefe and I am trying to avoid using a strong word but Chair ...

CHAIRPERSON: Ja.

MR MONTANA: Did not assist the commission it was trying to create and it was – it was a political statement more than providing the commission with facts. Unfortunately I had written my affidavit before he make these allegations but I did later incorporate some of those things.

10 It is false Chair. The reason why the Audit Committee is not R500 million – it is not a R500 million which came at a later stage but it has to do Mr Soni with the fact that the Auditor General wanted to change what you call an accounting treatment of how we treat locomotives.

So if PRASA pay Swifambo money and this money goes to Vossloh and they buy an engine from another company now that engine is in Spain but PRASA had paid the money how do we treat that in the books?

20 So there was a debate about that which impacted on the financials and not irregular expenditure or stealing of money as being projected here or lack of controls Chair.

And so it is not correct Mr Soni

ADV VAS SONI SC: Can I just ask you to turn to page 38 this – because the basis that Mr Molefe bases that on PM2 and I do not want you to think Mr Montana that I am trying to

favour Mr Molefe's version I am just trying to on the basis of the information before us to show you that it does appear in the financial statements. If you look at page 38 which is PM2.

MR MONTANA: Remind – PM – remind me Chair we are using the numbers at the top is it not?

ADV VAS SONI SC: Yes 038.

CHAIRPERSON: The red numbers but he – he will not mention the letters and every – and the 0 he will just say 38
10 so you.

MR MONTANA: Page 38?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: You will see at paragraph 14 it says:

“As disclosed in note and that not was to be attached to the financial statements the agency incurred irregular expenditure to the amount of R550 million.”

MR MONTANA: Yes but I am saying this – this financials
20 which financial year is this?

ADV VAS SONI SC: This is 2014 and 2015.

MR MONTANA: Yes Chair but that confirms my point. In 2013/20 – 2014/2015 the financials the irregular expenditure R100 million.

ADV VAS SONI SC: Okay

MR MONTANA: Then what happened is that I left in July before the financials were drafted. The only let us know Chair I will not even accept that. I work with the office of the Auditor General but I go into the details of the business including you know getting ...[indistinct – dropping voice] at a later stage but it has to do, Mr Soni, with the fact that the Auditor General wanted to change the – what do you call it – accounting treatment of how treat locomotives. So if PRASA paid Swifambo money and this money goes to
10 Vossloh and they buy an engine from another company.

Now that engine is not stable but PRASA takes the money. How does it sit in the books? So there was a debate about the in the financials and not the regular expenditure or stealing of money that is being projected here or lack of control, Chair. So it is not correct Mr Soni.

ADV VAS SONI SC: Can I just ask you to turn to page 38. This – because it basis that Mr Molefe basis that on PM2 and I do not want you to think, Mr Montana, that I am trying to favour Mr Molefe's version. I am just trying, on
20 the basis of information before us, to show you that it does appear in the financial statements. If you look at page 38 which is PM2 ...[intervenes]

MR MONTANA: PM... Remind you, Chair, we are using the numbers ...[indistinct] ...[intervenes]

ADV VAS SONI SC: Yes ...[intervenes]

CHAIRPERSON: The red numbers. But he will not mention the letter and every and the zero. He will just say 38. So you...

MR MONTANA: 38.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: You will see at paragraph 14, it says:

10 “As disclosed in note [and that note was to be
 attached] in the financial statements, the
 agency incurred irregular expenditure to the
 amount of R 550 million...”

MR. MONTANA: Yes, but I am saying this financials – which financial year is this?

ADV VAS SONI SC: This is 2014 and 2015.

MR MONTANA: Yes, Chair. Ja, but that confirms my point. In 2014/2015, the financials says the irregular expenditure is R 100 million, Chair. Then what happened that, I left in July before the financials were drafted. I will not even accept that. I worked with the Office of the Secretary General but I go into the details of the business including, you know, giving advices from people in the accounting field. That goes to say what does that mean, okay?

And they fought – I always fought with them.
respecting the office but making sure that they get the right

– and so these financials do not support Mr Molefe's view(?). It is supposed the fact that after I have left in 2014 – in 2015, July. When they finalised, they added in the irregular expenditure.

Chair, you raised a concern. I think when Minister Peters was here, you were also very strong on that point. Correctly, so to say how can irregular expenditure increase so much to almost R 20 billion and nothing was being done. Chair, at the right time I want to
10 deal with it.

CHAIRPERSON: Yes.

MR MONTANA: Because I have also got a scientific answer to that particular issue. So it is not correct. So this is a record after - and there have been agreements between in my absence. Sp.

ADV VAS SONI SC: And Mr Montana, again, I do know – what, as the Commission, we have got to do is. We have got to look at documents that are presented to us. If you look at page 34, that says that this is The Final
20 Management Report on The Audit With the Year Ended 31 of March 2015. That is the heading to this document.

Now, I am only raising this in this context because I accept you that the financials were done after you left but it is still for the period while you were there 2014/2015. Unless you are saying to us that these

financial statements misrepresent the position after you left.

MR MONTANA: Chair, I do not think - Mr Soni, we should be partial(?). Let me perhaps explain it systematically without even diverting on other issues.

CHAIRPERSON: Ja.

MR MONTANA: There is 2014. I am saying the financials – the Commission is being – or rather, the AG, the Auditor General's findings for 2014/2015 was?

10 **CHAIRPERSON**: R 500 million.

MR MONTANA: R 500 million for 2014/2015.

CHAIRPERSON: Yes.

MR MONTANA: And if you look at Mr Molefe's statement, he is definitely conflating the financials of 2014/2015. In 2014, what caused the delay was the accounting treatment and the auditors had pros(?). In 2015, it is a different matter altogether, okay? So there is nothing wrong with what you pointed. There is a record. I am not challenging it. There is a letter, though, that I have written for – to
20 challenge the financials. I have written to the Speaker of Parliament, Baleka Baleka ...[intervenes]

CHAIRPERSON: Mbete.

MR MONTANA: Mbete.

CHAIRPERSON: H'm?

MR MONTANA: Where I actually argued and wrote at

length that the financials of PRASA is presented by the Board of PRASA actually are wrong and they are misleading both Parliament and the users of the reports. So I think, Mr Soni, the – when – the audit for 2014 was finalised which was the year.

So Mr Molefe joined in August. We had the delay. So it means he would have list(?). If he joined on the 1st of July, he would not have been part of the 2014 – what is it called – auditor financial statements because
 10 they were getting approved by the board submitted on the 21st of July. But because there was a delay about the accounting treatment, so it then went to his board.

Now the amount that we are dealing speaks to 2015. So this is correct. It does not support – what is it called – it does not support... It does not support the assertions by Mr Molefe because he is actually referring to the – the R 500 million speaks to the 2015 Financial Year.

CHAIRPERSON: So let me put it in a way I understand it. Let us take out Mr Molefe for the time being.

20 **MR MONTANA:** Yes, Chair.

CHAIRPERSON: And let me start what you said about 2013/2014. I understand you to say. In respect of the Financial Year 2013/2014, the irregular expenditure was R 100 million. Is that correct?

MR MONTANA: That is correct, Chair.

CHAIRPERSON: Yes. Now I understand these financial statements to say in respect of the Financial Year 2014/2015, the irregular expenditure is – is it R 500 million or ...[intervenes]

ADV VAS SONI SC: R 550 million.

CHAIRPERSON: Million Rand. And my understand of that is that whatever it is that had given – that gave rise to that irregular expenditure of R 550 million happened during the Financial Year of 2014/2015. Are we on the same page on
10 that?

MR MONTANA: Chair, no, certainly we are.

CHAIRPERSON: Yes, okay.

MR MONTANA: We are Chair.

CHAIRPERSON: Okay.

MR MONTANA: So that I accept.

CHAIRPERSON: You accept, ja.

MR MONTANA: Except Chair that the auditors ...[intervenes]

CHAIRPERSON: Ja.

20 **MR MONTANA:** ...made their own findings based on the evidence that has been presented to them and that is why the 2015/2016 Financial Year at the - what is it called – the irregular expenditure by PRASA ...[intervenes]

CHAIRPERSON: Ja, h'm.

MR MONTANA: ...are factually(?) challenged, Chair.

CHAIRPERSON: Ja.

MR MONTANA: Because – you see, when the auditors come – and let me put it up front so that when Mr Soni takes me through he understands what my point is.

CHAIRPERSON: Yes.

MR MONTANA: Chair, at the heart of my letter to the Parliament to ...[intervenes]

CHAIRPERSON: To the Speaker.

MR MONTANA: My letter to the Speaker of Parliament
10 which I copies to the Chair of SCOPA, Mr Themba Godi. I said PRASA made serious misrepresentations because immediately when the first R 100 million story and later then became R 14 billion. R 500 million, it went to R 14 billion in the next year. I then took a report to the Auditor General to analyse it. It was not a trust(?).

Chair, I found something very shocking. Actually, I did the calculation. That the twelve out of the R 14 billion, R 12 billion of that amount was actually with irregular expenditure. The auditors mention in their report
20 that the accounting authority and management failed to provide them with records though the payment had(?) a contract and all of those things.

They speak about the limitation of scope in their duties and what happened, therefore, is that – then they started to declare all of these things as irregular. Now, we

know these contracts are there at PRASA. We know in the financial statements the payments that PRASA does. They can pull out those numbers and give it to them. Then Popo Molefe went out to the media, Chair.

We are finding a lot of corruption. R 14 billion. And some of that, by the way, R 4 billion of that R 14 billion - R 4 billion(?) of the R 4 billion(?), Chair, has happened in the year that he was Chair. Number one. Number two. He then went to – back to 2012, okay? If you
10 want to destroy a country and an organisation, you must do that Chair.

When we formed – when we informed PRASA in 2008 – I had a session with the auditors, Auditor General. They said to us: We do not like the way in which you treat some of the assets that you have. You see, we have got the work in progress and everything but what we have is that when you guys have spent money on the refurbishing a train you then capitalised it in the statements as in total as it is.

20 They say: We want you to move away from that. We want you to start to say this coach that you have refurbished, capitalise the money for work(?) separately. So the components that are in the train, you break them in that way. That became the practise and the Auditor General had given us unqualified audit for the entire period

I was there.

That auditors comes – because in 2014, the board extends the contract of the companies involved in the refurbishment. The Auditor General's office, you expending this contract. The board approved that you extend these contract from 2014 to 2019 whilst you are waiting for a delivery of new trains. Can we see the contract? Can we see the payments?

The Board of PRASA under Popo Molefe, we
 10 have heard that information from the auditors. And when the auditors recap all of those things going back to 2014, okay. I remember even the amount. I wrote to the Speaker. The amount we paid to this company, to the companies involved in the refurbishing, Mr Soni, was R 5.6 billion. We have refurbished over 3 000 compartments(?) between 2008 and 2014. So that is good value for money. But the auditors say: Furnish us with the documents.

The Board of PRASA under Mr Popo Molefe and
 20 the Company Secretary, Mr Lindikaya and my good friend, Mr Nati Geldenhuys(?) here, who was the acting CEO after I left. They failed to provide that to the Auditor General's office. And what did I do? The Auditor General says: Even in prior years where we have given you an unqualified audit, we are then going to declare those as

irregular expenditure.

Then Mr Molefe jumps, goes to the court. We are ...[indistinct], a lot of irregular expenditure. Chair, I will never accept it. Even this R 500 million. It was done after I had left. I said not(?) in you. Chair, irregular expenditure, as I said that the – they wanted to meet SCOPA's R 32 million. In the following year we had R 100 million. This R 550 million was cooped(?) as a justification to appoint Werksmans so that they can have
10 work at PRASA and continue to do.

And that is why I am waiting for a day, Chair, where Werksmans will bring its top guns and come and be cross-examined because I think they have got a lot to explain to the country and not me Chair. So Mr Soni, what I am simply saying is the Chair tried to capture, okay? There is nothing wrong with what you are referring to me in pages 32, 34.

It reflects that if you do not go, you do not understand the story you are going to say: Hey, indeed
20 Montana was running this big... You get the irregular expenditure three, fourteen billion. It is false Chair. I think my letter would be part of the evidence but that comes here, where I said, actually Parliament was misled. They use us or the reports of PRASA.

But both Parliament and the users having – so

Chair, you can see that this is a political games that is being played. He wanted to increase the irregular expenditure. He even forget that some of it is incurred under your leadership. And you go there but no. We want to fight this corruption because corruption means irregular expenditure is not translated to. Corruption.

Let me finish it in this way, Mr Soni, so that I do not digress here. Well, let me start with poor Peters and I thought she talked about it. She would all letter to
 10 Mr Molefe and one with them dealt with the issue of irregular expenditure and the appointment of Werksmans. I do not know, I think the legal firm they said Werksmans. Chairman and it is ...[intervenes]

CHAIRPERSON: Well, I think for quite some time now I have not been sure whether it is Workmans(sic) or Werksmans. So but I think, you know, some people say Werksmans, others are Workmans(sic). So.

MR MONTANA: Chair, I want to call them the way I call them when I speak to my people Malamute.

20 **CHAIRPERSON:** H'm.

MR MONTANA: But it became Werksmans the time for PRASA. What is this Werksmans? What are they doing at PRASA? Mr De Voor(?) writes a letter, Chair, to Mr Molefe and say: Stop this thing about Werksmans. It is not budgeted for and if they expenditures are irregular. You

know, that was Mr Molefe's response. That it came in, Chair.

He says, in his response to the Minister: Well, R 550 million, we will pay Werksmans this amount for a project of this nature. We pay companies not more than 10% of the value of the contract. So Chair ...[intervenes]

CHAIRPERSON: Just please repeat that ...[intervenes]

MR MONTANA: Let me repeat, Chair ...[intervenes]

CHAIRPERSON: ...at least I can ...[intervenes]

10 **MR MONTANA**: Because I can see you change your face
Chair.

CHAIRPERSON: Ja.

MR MONTANA: Again – and I like that Chair because this point is very important.

CHAIRPERSON: [laughs] Well, on a lighter note. Somebody else is going to say I am agreeing with you.

MR MONTANA: Exactly.

CHAIRPERSON: [laughs]

MR MONTANA: I think you are in this difficult position
20 Chair.

CHAIRPERSON: [laughs]

MR MONTANA: But Chair I was watching again without digressing Chair.

CHAIRPERSON: H'm?

MR MONTANA: I was watching a movie, this Nigerian

movie. So this chap was talking and the other chap is a chief. He does not like what he is saying but this chap indicated the chief does not – so he changes the facial expression and this chap just say to him: I do not like the geography(?) in your face. So Chair, I like the geography(?) in your face on this one.

CHAIRPERSON: [laughs]

MR MONTANA: Chair, let me go back. These facts – the Minister of Transport should not ask about the payments of
10 Werksmans in the irregularity because normally on contracts of this nature, we will charge 10% of the value of the work that they are doing. So that it tells you Chair is that they do not only appoint Werksmans regularly. And then in my affidavit I thoroughly demonstrated that actually the appointed Werksmans fraudulently. Up to paid work for Werksmans, they then raised the numbers. The higher the irregular expenditure and wasteful expenditure at PRASA. So 10% of R 100,00, Mr Soni ...[intervenes]

ADV VAS SONI SC: [Indistinct] ...[intervenes]

20 **MR MONTANA:** Chair, it is R 10,00 or whatever if my multiplication is right. Ten percent of R 14 billion [speaking vernacular] Chair. So Mr Molefe ...[intervenes]

CHAIRPERSON: Just remember to translate those vernacular. [laughs]

MR MONTANA: Chair, I will try, hey.

CHAIRPERSON: [laughs] But it looks like it is quite a trend, you know. Today is what? When was Mr Mantashe here?

ADV VAS SONI SC: I think Wednesday.

CHAIRPERSON: In the course of his evidence, at some stage also, he said the evidence leader [speaking vernacular] or something like that. [laughs] He resorted to his Xhosa but quite a few witnesses have done that.

MR MONTANA: [laughs]

10 **CHAIRPERSON:** I think Mr Zuma also did when he testified in 2019. He would put in some Zulu words.

MR MONTANA: I do not know whether the ANC thing(?) Chair or ...[intervenes]

CHAIRPERSON: [laughs]

MR MONTANA: ...we learnt(?) it from there. But Chair the response is extraordinary. Here is the Minister who is accountable for PRASA. And at that time, the relationship, it was no longer the same Whatsapp group. It has gone – then Minister Dipuo Peter then writes some very hard
20 letters. PRASA is falling apart. The board is not focussing on the right things.

CHAIRPERSON: Hang on, hang on. Because I seem to remember something. When you talk about the relationship of being the same people being in the same Whatsapp group. You are talking about Mr Molefe and Minister

...[intervenes]

MR MONTANA: Minister Dipuo Peters.

CHAIRPERSON: ...Dipuo Peters. But I seem to have the impression that you and the Minister we also, at some stage, getting along quite well but that had changed. So that is why I wanted to know, who now are you talking about?

MR MONTANA: You know Chair ...[intervenes]

CHAIRPERSON: [Indistinct] ...[intervenes]

10 **MR MONTANA**: ...every time I talk about the elders and I think at some stage when we come to the meeting with the President because I laughed, I was told it(?) stopped for many hours. The President fell asleep and everything.

CHAIRPERSON: H'm, h'm.

MR MONTANA: My grandmother, Nonallele(?), she would teach me, Chair. If I speak to an elder in a manner where I do not show respect and that she has taught me the principle, an elder is right and if they are wrong, you are to accept it. Minister Dipuo Peters, Chair, I showed her my
20 support and respect. I left the testimony here, okay. Because she told the truth but she forgot one fundamental truth, Chair. And that fundamental truth was the fact that her and Popo Molefe were working together...

Chair, and I elaborate on this in my affidavit – and at that time we must look at the speeches at the AGM

of PRASA immediately after I have left and a year later when that relationship changed. Mr Molefe – you know, Chair, let me put it bluntly here.

Popo Molefe was appointed, Chair – he was appointed Chair of PRASA because I and my chairman, Mr Sfiso Buthelezi refused to accept that I am a lawful instruction to cancel an award, not a contract at that time, an award of a contract – an award for the new trains that we build because our people – I always say in my affidavit, it is very
 10 clear. PRASA was destroyed by greedy ANC politicians put in light and award to a company. Do even tenders – why do you appointed the French?

And I said to them change the laws and tell us that we should not appoint imperialist or multi-national companies because you are part of a well-oiled trained organisation. You have signed things. I was not even there that you are even going to allow these companies to – when they win you cannot say you do not like them. Chair, they refused an unlawful instruction.

20 And we were at Mujanti(?) House when the first time the then Minister Dipuo Peters told Popo – told me and Mr Sfiso Buthelezi and a chap by the name of Peet(?) Sivula(?). She come there – and this was the second meeting, we had one in Cape Town – where she says: Ja, we cannot be dictated times to by the French and

everything.

And I said: Minister, we are not guided by the French. We are guided by the condition of Metrorail. If you do not make this intervention, Metrorail will collapse within three years. That is what they want. And secondly, if we follow the instructions – we have obtained legal opinion and it is very clear that if we cancel this award to ...[indistinct] led by ...[indistinct], we will actually be acting in violation of the Procurement Law.

10 And if these guys take us to court, we are going to pay them R 50 billion without even buying a train. In that meeting, she said: Well, I am going to change the board. Yes, the Board of PRASA was due for – it was coming to the end of its life Chair. They are appointed for three years.

But Chair, I think – I am not sure if Mr Sfiso Buthelezi my former Chair would come. Ask him, Chair, how many times he has had discussions with Minister Dipuo Peters. Some of them on the phone in my presence,
20 when Mr Molefe was talking to the Minister, where he was promised here the board is empty, we are going to reappoint you.

The next day, we are not going to appoint you but we were told at Mujanti House in March, I think it was March/April 2014 that they were going to change the board

after we refused to accept this thing. They are going to change the board and that he for the first time that they are going to bring Mr Popo Molefe.

Chair, let me say and Mr Soni. I knew I was going to lose my job. I knew because I have defied very powerful politicians in the ANC. I will not mention them today because I am waiting for us to reach consensus of my affidavit. I deal with that matter in great detail, Chair. So they wanted to appoint their own people. I said it is not
10 going to happen.

You know, the ANC people, Chair, sometimes the ANC – the ANC is my party Chair. I belong to the African National Congress. I joined it in my teenage years as a student activist in ...[indistinct] and with all the things happening today I still remain loyal to the ANC. But we were not happy - those who are fighting President Zuma, they are extremely happy that I went to Parliament to testify before the Parliamentary Inquiry at Eskom and I have dealt with the Gupta's there. They were so happy
20 because this thing was going to be used against Zuma.

No, I am happy Chair because I said it is not only the Gupta's. The Gupta's tried to manipulate our problem. Chair, I refused. I fought with them and I told them not in our name. I told the Minister of Transport at that time that nothing – it is not going to happen but there

is – so if the Gupta's were the left side, the right-hand side – Chair, I mention them in a – Advocate Soni, you have read my affidavit.

I mentioned all of them, Chair, in detail and provide the evidence. So they wanted to do exactly what the Gupta's – the Gupta's were fighting for certain things. They had the right to do business with us but when they tried illegal things, they tried to manipulate the PRASA, the programme. I told them that, no, Minister Dan Martins
 10 actually said – he testified in Parliament the day after testifying, he said: Lucky, I fought with these guys for more than an hour in the meeting because I said you cannot – money in our names in our names. You cannot tell people to go out of the country that you are working for us and you are working for President Zuma.

Tony Gupta represent Zuma. Zuma was there. I told them: Guys, this is our President. He must – we have got a duty to protect him and if you guys go out of the country and you want money from these companies that
 20 came to work for the President, I am going to fight against that and I am going to convey that to the President. So I did that Chair. So it is detailed in my statement including what I said in Parliament. But they were happy and said, no, focus on the Gupta's.

You know, the big – another analyst said the

bull-frogs(?). The bull-frogs are here Chair. That is why I became an enemy and I knew that they would fight with us. And I told Bishop(?) Kenite(?). So when I told Mr Pop Molefe that I was going to resign, I start with Bishop Kellece(?) because when Minister Pravin Gordhan gazetted the PRASA rolling stock in 2014, he did not want to do that Chair. It was a big fight.

ADV VAS SONI SC: I think, Mr Montana ...[intervenes]

MR MONTANA: Can I just make this last point quickly and
10 then I – I am sorry Mr Soni.

CHAIRPERSON: H'm.

MR MONTANA: Because – so the point I am making is that I knew at that time when he had to sign, even against his will, that proper procurement process, he did not want to sign it. And I stood up fought Chair. When it got signed and gazetted, I celebrated and I said Shange(?), to Sifiso Buthelezi: Shange, we have done this and no one can reverse the fact that our people in the next 40-years will have decent trains, similar equivalent to the Gautrain and
20 even probably better than the Gautrain in some instances.

But this is going to come at a high price and that I am going to leave PRASA. They persuaded me to stay. So when Popo Molefe came – one of the trips(?) was in January at the InnoTrans in 2016. No, sorry in 2014. So he came in August. The InnoTrans, which is the biggest

exhibition in railways where railway leaders, manufacturers, financials come every two years in Berlin.

So we are there. And I said to him what the Gupta's with trying to do and what they did and I have also indicated to him that: Look, I want to step down. Because I knew Pop Molefe came to the board, Chair, precisely because the then Minister of Transport, okay, was unhappy with the fact that we refused to follow instructions. The Minister of Transport, I thought, Ms Dipuo Peters would
 10 have told this Commission why they appointed Pop Molefe. It is in my affidavit.

Why they appointed Pop Molefe into the Board of PRASA because Popo Molefe was never nominated by anyone. Soto Manase was never nominated by anyone. Willem Steenkamp was nominated but they were into the board of PRASA to execute a mandate. But Chair, I became disciplined to work with them.

So Mr Soni, I am simply saying. We should not – we should be careful that these things are not manipulated.
 20 The 20014 financials is R 100 million. The 2014/2015 of the '15 year is – but does this support Mr Molefe's affidavit? Because he is talking about when there was a delay and then there is a new board had to deal with the – approve the financials for a period that there were not board members, Chair, which 2014/2015. The delay was

caused by accounting treatment.

R 500 million comes with the 2015 Financial Year and it is based on gross misrepresentation and holding back critical information of 2014/2015 so that we can increase the 10% of that amount. The higher irregular expenditure, the higher the 10% - the value of 10% for that share, Chair, and I will elaborate on that. Sorry, Mr Soni.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Mr Montana you know, I am the
10 evidence leader the Chairperson obviously rules what happened. You know we have got a lot to go through, this is what I am going to suggest and I really do not want you to I misunderstand.

I want to go through them, I said to you the process I was using. Everything you have said is relevant and I am not taking that away. Let us put in the right place because there is another issue.

As we were talking I was just thinking, how does the Chairperson, when he is writing his report, put the various
20 parts that you are talking in a logical way because they are all over the place, if you know what I mean.

MR MONTANA: Sure, sure.

ADV VAS SONI SC: So if we could just be disciplined about that, you can say ...[intervenes]

MR MONTANA: I will cooperate with you, Chair,

sometimes I get – because I happen to connect so many of the dots and I put it together.

CHAIRPERSON: Ja.

MR MONTANA: So feel free also to say no, let us park that and let us deal with what is before us.

CHAIRPERSON: Yes, no, no, that is fine.

ADV VAS SONI SC: So long as we are on the same page.

CHAIRPERSON: Ja. Also, when you are done, when Mr Soni is done, if there is anything that you think he did not
10 touch on which you think is important, I will give you a chance to deal with those. So you can makes notes as we go along of things that you do not want to forget.

MR MONTANA: Thank you, Chair.

CHAIRPERSON: Ja. Okay, alright. Mr Soni?

ADV VAS SONI SC: As you please, Chairperson. Then ...[intervenes]

MR MONTANA: But, Chair, can I, without interrupting you, can we just confirm, Chair, on what basis you are leaving this thing because I was trying to clarify the 2014/2015
20 financial year.

ADV VAS SONI SC: Yes, no, no, I understand.

MR MONTANA: They are not one and the – so this thing that Mr – evidence on the annual financial – audited financial statements, they are speaking actually to a different matter to what Mr Molefe is raising. That is what

I am saying, Chair.

CHAIRPERSON: Well, put it this way, certainly from my side I hear what you say. It may well be that later on when I look at it, I might need more clarification but I have heard what you say and Mr Soni, if he needs clarification, he will ask. If he later on thinks he needs clarification you can be approached to provide clarification.

ADV VAS SONI SC: Sorry, Chair, the clarification that I want now is this. You have seen PM2 which says there
10 was that irregular expenditure - we have been to page 38. Now as you were talking I understood you to say but that is based on false information that was presented to the internal auditors, is that your point as well?

MR MONTANA: Chair, I am saying that when the financials were finalised I was – when I left, there was no 500 on the table.

ADV VAS SONI SC: No, I understand.

MR MONTANA: So there was no 500 on the table.

ADV VAS SONI SC: I just wanted to clarify.

20 **MR MONTANA:** Yes.

ADV VAS SONI SC: So you say that that is false.

MR MONTANA: I am saying that if you look at 2015/2016/2017 financial year, actually the PRASA statements, parliament audit standing committee, should not have accepted those financials.

ADV VAS SONI SC: Okay, but we have been through that, I do not want you to.

MR MONTANA: Ja, ja, I am confirming that, yes.

ADV VAS SONI SC: Sure. Then at paragraph 17 he says that aside from that challenge about the audit, he says that there was a concern that employees were regularly suspended or dismissed often in violation of their constitutionally guaranteed labour rights and he says the CCMA reversed many of the decisions to dismiss them. Do
10 you agree with that?

MR MONTANA: No, no, Chair, I do not share this. Mr Molefe was not at PRASA when these executives were fired, the only people that were either dismissed – there were two people that were dismissed and I think that both who testified before you, Chair, Mrs Martha Ngoyi well as Mr Fani Dingiswayo.

Now we can see that – you know, we are mixing up issues here, the NTM issue – I am the Group CEO, Chair, I employ with the approval of the board, I appoint CEOs of
20 the PRASA divisions and subsidiaries, I ...[intervenes]

ADV VAS SONI SC: But, Mr Montana, I am sorry, I am going to have to limit you to answer this issue. He is talking about employees, not Chairpersons of boards and so on.

MR MONTANA: No, no, Chair, hear me, Mr Soni, I hear

what you are saying. I am saying he is saying here people who were reversed CCMA on one occasion more than 500 members of the National Transport Movement, NTM, were dismissed only to be later reinstated by the Labour Court whether or not he was ultimate decision-maker, the CEO had to take ultimate responsibility. Chair really. Really, Chairperson.

And this – and when I say subsidiary, I am not talking about Chairpersons, I am talking about CEOs so all
10 the group executives and the CEOs were appointed in fact by the board. I will recommend to the board appoint these people.

A person who works at a station or at the depot in Braamfontein does not report to the group CEO. You know a person who works at the depot is a member of the National Transport Movement. He works at the depot, he report to a depot manager or supervisor, who in turn reports to higher people.

These people were not dismissed by me, the reason
20 they were dismissed, I think they were correct, Chair, but for – I think that you can see that Mr Molefe is trying to stretch this point where he wants the person dismissed at the corner there to be attributed to me personally and you can see that he is not even sure, he says whether he is the ultimate decision but he must ultimately take responsibility.

At what point does the CEO take responsibility?

Chair, if I put controls, I put systems in place and someone violate that, I do not take control but if a driver, a train driver smashes a train and an investigation says but the CEO did not put in place the necessary controls, this driver said he crashed the train because he could not see and they realised that he did not go for a medical check-up to see annually and that I did not put in place a system to make sure that this driver goes for that. I am personally
10 responsible.

CHAIRPERSON: But the long and short of your answer is that he is not talking here about people that you dismissed.

MR MONTANA: No, Chair, he is talking about 500 members. Where are these people? These are junior employees in the company.

CHAIRPERSON: Yes.

MR MONTANA: You know, some of them I have not seen with my own eyes, how do – who issued a letter of suspension or dismissal of these employees?

20 **ADV VAS SONI SC:** Okay, I think what the Chairperson is saying and I should not talk for him but let us get the fact. The fact is the employees were dismissed, they were reinstated by the CCMA.

You say that is not a matter for which you should be held responsible because those decisions were taken by

other PRASA officials, is that your answer?

MR MONTANA: No, Chair, I am saying probably two or three different things. The first one I am saying here are junior employees, Mr Molefe is clutching at straws, he does not even know who took the position but he says Montana must take responsibility, Chair. That is wrong. So that is the first thing I am saying.

Secondly, Mr Molefe does not state here, Chair, who was irregularly dismissed or suspended. Okay?

10 Today I am prepared to talk about two people, he does not mention them. Is he referring Ms Ngoyi and Mr Fani Dingiswayo? He does not state here, Chair.

ADV VAS SONI SC: So Mr Montana, let me help you.

MR MONTANA: Ja.

ADV VAS SONI SC: And really we must get on. I am sorry, I am going to have to be firm about his.

MR MONTANA: Yes.

ADV VAS SONI SC: And the reason I am saying that is, it is quite clear, we all know that Ms Ngoyi and Mr
20 Dingiswayo were dismissed in 2017. He is talking about 2014 and 2015.

MR MONTANA: No, they were dismissed by me, Chair, in 2015. Ms Martha Ngoyi, she is here, Mr Fani Dingiswayo, they were fired by me in 2015.

ADV VAS SONI SC: Okay, well he is clearly not talking

about them.

CHAIRPERSON: Well ...[intervenes]

MR MONTANA: Who is talking about, Chair, so that we can be specific?

CHAIRPERSON: Sorry, sorry, sorry, sorry. Well, I am not sure how important this allegation is of the dismissal of 500 members. In the particular paragraph Mr Molefe does not mention the year, as I see it, in the previous paragraph, he is talking about the issue of the 500 million
10 where he refers to 2015/2016 but as I understand it, as far as you are concerned, nobody that – the 500 members of National Transport Movement Trade Union, you say those – the decision to dismiss them would not have been taken by you. That is one of the things you say.

MR MONTANA: Yes, Chair.

CHAIRPERSON: Yes.

MR MONTANA: But, Chair, can I ask you to address for one minute?

CHAIRPERSON: Yes, ja, no, it is fine.

20 **MR MONTANA:** Because I think the State Capture Commission, the workers that were dismissed and the country needs to understand what actually has happened. We just spoke about the 500 million, that goes to 14 billion, to try and present the particular picture.

Let me explain to you what happened, Chair. The

NTM members, those employees, they were dismissed by PRASA, number one. They went to court, to the Labour Court, they lost, Chair. That is the first issue.

They lost. And you know what happened? I was still there and for me, as Group CEO, even though I did not participate in the dismissal, because here it is people that were on strike action, there was burning of trains and everything. I had to show the court how much we have lost as a result of this unlawful strike where assets were
10 destroyed. PRASA one the case, Mr Soni.

What happened thereafter is that 15 July came, I leave PRASA. The employee relations guys, they get fired at PRASA because no, employee people, you are Montana's people. They get fired. The matter then goes – MTN, within its rights, correctly so, goes to the Labour Court, Chair.

CHAIRPERSON: Appeals the earlier decision of the Labour Court.

MR MONTANA: Appeals that decision by the court.

20 **CHAIRPERSON:** Ja.

MR MONTANA: Chair, you must go and see – so they win that appeal because PRASA, exactly the point that Mr Molefe is doing, they do not then defend this matter properly, they actually collude with the MTN people, PRASA loses.

You know what the cost of this court judgment, Chair? A billion rand for PRASA to reinstate these people. It is a billion rand which it does not have in its operational budget.

So, Chair, here is someone who is destroying an entity, okay? He is manipulating the State Capture Commission that people are being dismissed and everything.

He does not write here that if we handled this issue
10 – in fact, when I realised that PRASA is going to be in trouble, I then put a tweet - and this will be my final point, Mr Soni – I put a tweet, I say if I was still CEO of PRASA before the matter – because I was realising I had intel on what is happening on this matter, I say if was PRASA, call back these people, reinstate them, renegotiate the time so that we have win-win situation and people say no, like he wants to rule from the grave.

It went to the court. PRASA failed to do its work. They could not even explain to the court that each of these
20 employees that were part of the 500, the court was saying we do not want a common purpose approach where you say there was a strike so if the train was burnt, all 500 are responsible.

But PRASA did not do its proper work, Chair, making sure that it followed those procedures, the impact

is that it has got these employees who have been reinstated – and understand me, Chair, I am not saying they must not be reinstated, but the cost to the business of playing political games are exactly what Mr Molefe has done as he done with the irregular expenditure, 500, 14 billion and then, Chair, you were asking a month ago, how does it come to R20 or R21 billion? Precisely because we are playing games with institutions that [indistinct], it will not happen when I was there, Chair. I will never agree to
 10 it.

So this is the real story, Chair. So this thing that Montana dismissed people, people who do not follow my instructions, people who do not do their work or people who find that they are – because ultimately I am charged, I report to a board.

When I go to a board and they say Mr Montana – my board, people think they are my friends, they were taking me to task and my team had to raise their standards, Chair, and make sure that they deliver and at some stage
 20 Ms Ngoyi's, for example, document, she talks about how she was dismissed. I think at the right time we will talk about it.

CHAIRPERSON: Ja.

MR MONTANA: So, Chair, I am saying I do not accept this, I think that is false, it is actually a gross

misrepresentation by Mr Molefe.

CHAIRPERSON: Okay.

ADV VAS SONI SC: I will just alert you to this so that we are not at odds, but that is more or less a finding made by the Public Protector as well but we will come to that because I am going to give you an opportunity to deal with it.

MR MONTANA: That is not correct.

ADV VAS SONI SC: I am merely making the point, that is
10 one of the reasons I raised it.

MR MONTANA: No, no, Mr Soni, but that is not correct. Which Public Protector report? Are you referring to Derailed?

MR MONTANA: Mr Molefe, let me just ...[intervenes]

MR MONTANA: I would love to be Mr Molefe, Mr Soni.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Mr Montana, let me just say to you can we please make progress? You are saying you want to assist the Commission, I have to insist that we do things in
20 a structured way. I am not stopping you but I did not want to leave that point when I was saying to we are going to return to it.

MR MONTANA: Are we going to return to it, Mr Soni?

ADV VAS SONI SC: We will, yes.

MR MONTANA: Okay, no I wanted to correct to the Chair

that the Public Protector ...[intervenes]

ADV VAS SONI SC: We will deal with that then
...[intervenes]

MR MONTANA: We never dealt with it, yes. Okay, it is
fine, Chair.

CHAIRPERSON: Ja, okay, okay, let us continue.

ADV VAS SONI SC: Then in paragraph 19 he says that in
regard to the Braamfontein Depot modernisation project
and the purchase of rails and turnouts, the board before
10 ...[intervenes]

CHAIRPERSON: I am sorry, Mr Soni, maybe one of the
things that you should do from your part to facilitate what
you want to - what you were talking to Mr Montana about
is maybe do not take too big a junk to put to him.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Maybe more manageable points and let
him respond to those points. Maybe it is going to be
better.

ADV VAS SONI SC: Yes, yes, as you please, Chair.

20 **CHAIRPERSON:** Ja, okay.

ADV VAS SONI SC: So in paragraph 18 he refers to two
tenders, the Braamfontein Depot modernisation project and
the purchase of rails and turnouts. Are you aware of those
two tenders?

MR MONTANA: No, no, Chair, I am aware.

ADV VAS SONI SC: And then he says that at a meeting it was said that those tenders were important – I mean, sorry, were urgent. Do you agree that that is what happened?

MR MONTANA: Chair, the meeting of the 27 November, this was a board – yes, those tenders were very important, ja.

ADV VAS SONI SC: Yes, okay. Then he says that – in paragraph 19 before the board approved of that, that is his board now, it wanted a probity report as an assurance that
10 the relevant procurement prescripts and processes had been followed. Is that correct that he asked for a report?

MR MONTANA: Are you referring to paragraph 19?

ADV VAS SONI SC: Paragraph 19.

MR MONTANA: Chair, the board never requested for this thing.

CHAIRPERSON: I think it is paying dividends, smaller points.

ADV VAS SONI SC: Yes.

MR MONTANA: But can I – there is a material point,
20 Chair, I am trying to assist Mr Soni.

ADV VAS SONI SC: Yes.

MR MONTANA: But you see, I do not want to us to lose the ...[intervenes]

ADV VAS SONI SC: No, no, sure.

MR MONTANA: Chair, what has happened here, when we

embarked, there were two major programmes, the buying of new commuter trains and the depots because when they were buying new trains, the depots where they were going to be maintained, needs to be ready.

So we had these major programmes. And this was done under times that were said by the minister – by the Honourable Minister of Finance at that time, Minister Pravin Gordhan.

Now one of the things the board of PRASA, that is
10 before Popo Molefe, under Mr Sfiso Buthelezi, was that because these are big we need to appoint probity officers to make sure because we were going to have a big fight on these issues, people are going to take us to court, let us appoint a probity officer so that when as the board makes decisions, because these are not decisions by the CEO, it is a decision by the board, we get an assurance that the process has been followed.

So that was the standard practice. They did not have to ask for that. So it started during Mr Buthelezi's
20 time. It was a major governance control issue.

Now when we come to this specific meeting, Chair, we say that the report is not there and I am asking to answer it in two ways in 18 and 19 quickly.

You know, Chair, here are major insinuations been made against someone that Mr Sfiso Buthelezi wanted

these things to be approved before he leaves. At that time he was no longer the Chair of the board, he was the Chair of the PRASA's Finance Capital Investment and Procurement Committee which basically before you go to the board, they are the ones who review these things before they recommend them.

18 is so false, it is based on insinuation where evidence - Mr Buthelezi never did anything of the sort, Chair, he never wanted to push this contract. In fact these
10 matters were dealt with.

Management came – not Lucky Montana, management, the Chief Procurement Officer and the teams to come and present these issues that were there. So 18 is false, Chair, this assertion is false and is actually trying to put a [indistinct] Buthelezi, insinuate that Mr Buthelezi had an interest in this thing on the depot modernisation thing.

This depot is important precisely, Chair, because we knew in 2015 we will get the first train, it had to come
20 there, so that is a number – let me answer number 19 there, Chair.

In 19, the reason why, Chair, there was the thing. At this meeting no one was aware that the contract of the probity officer had actually expired, Chair, and it was actually – it had to be renewed, to be extended and it was

through that process.

I was sitting here when I heard Mr Molefe saying that I promised them this report and then later it was not there.

The meetings on this Braamfontein thing was actually held when I was on leave later and the CEO was a Mrs Ngoyi. So, Chair, it is false, I do not accept it, it is false and the reason why there was no report, Chair, and the reason why there was no report, Chair, was precisely
10 because myself as CEO and the board, we did not even know that the probity officer's contract ...[intervenes]

CHAIRPERSON: Had expired.

MR MONTANA: Had expired and that has not at that time been brought to attention. Now this thing is being turned to say we are misleading the board and we were to tell them that it is a report.

Mr Molefe had gone out to say there is corruption in this issue. In my affidavit and evidence I provide evidence that actually that is false, Chair. Okay.

20 **ADV VAS SONI SC:** Mr Montana, can I just summarise what you said? Firstly you say there was no probity report so you and Mr Molefe had agreed with – but you say he never asked for a probity report.

MR MONTANA: No, it was a standard practice, Chair, with all the modernisation projects that we were

implementing.

ADV VAS SONI SC: But was there a probity report?

MR MONTANA: No, no, no, there was not in this particular meeting, Chair.

ADV VAS SONI SC: Okay, that is the answer you and him agree on.

MR MONTANA: No, no, no, Chair, no, no, Chair, he is saying here - the issue here, Chair, I think that if we end it there we would be making a serious mistake because we
10 will be misleading the Chair, the issues ...[intervenes]

CHAIRPERSON: Yes but hang on, I think what Mr Soni is doing, he might be coming to the point that you want to emphasise. He is taking various parts of your points to make sure that he has understood them correctly.

MR MONTANA: Okay, Chair.

CHAIRPERSON: Ja, he might be coming to the point that you want to emphasise.

MR MONTANA: Okay.

CHAIRPERSON: Ja. Mr Soni?

20 **ADV VAS SONI SC:** As you please, Chair. So, Mr Montana, let me ask you this. You have told us that the probity officer's contract had expired. That is correct? If you could say yes.

MR MONTANA: Yes.

ADV VAS SONI SC: And I do not mean it with disrespect.

MR MONTANA: I am sorry, just uncomfortable in the chair.

CHAIRPERSON: Yes, okay, okay.

ADV VAS SONI SC: Now what I want to ask is, even though the contract had expired you say there was a report or there was not a report?

MR MONTANA: No, no, in this meeting I am confirming there was no report.

ADV VAS SONI SC: Right.

10 **MR MONTANA:** And at the meeting I was also not aware the report – the contract had expired, Chair.

CHAIRPERSON: Yes ,okay.

ADV VAS SONI SC: Okay. So but the point then is that the real contention between you and Mr Molefe is he says he asked you for the probity report, you promised probity report, you are saying that that is false.

MR MONTANA: Chair, it is false.

ADV VAS SONI SC: Okay.

20 **MR MONTANA:** And, by the way, Mr Soni, this report is not taken to the board by me. The committee of the board, the people – because you remember, Chair, we have a delegation of authority of 100 million.

If the teams do a tender and it is 100 or below it will be recommended to me for approval.

If the contract is over R100 million and here we are

dealing with contract far above my delegation of authority, the contract would go through the board and that will go each subcommittee which will look at it. So there is a report before the board from this committee, Chair.

So I am saying at that time materially both the board and I did not even know that the contract – there was no report and in the discussion, during the discussion, Chair, then the issue comes up but Mr Molefe did not ask Mr Montana where is the probity officer? We never had
10 that, Chair.

ADV VAS SONI SC: Okay. So that is the only difference between you and him.

MR MONTANA: And it is a fundamental difference.

ADV VAS SONI SC: No, no, I understand that, he is obviously trying to say that you were being defiant or not cooperative or being dishonest. Whatever it is, we know what the difference ...[intervenes]

MR MONTANA: Well, Chair, his reason, Mr Soni, I actually captured in interviews and these interviews are
20 available to the commission, he says this R4 billion tender was a corrupt tender ...[intervenes]

ADV VAS SONI SC: [inaudible – speaking simultaneously] outside the Commission.

MR MONTANA: Okay.

ADV VAS SONI SC: Yes. Now then he says soon after

this you asked to be released on leave saying that you were suffering from fatigue, is that correct?

MR MONTANA: Chair, I went on leave and I pointed Ms Ngoyi to act in my position and I had indicated that look, it has been a busy year and I needed to take a rest.

ADV VAS SONI SC: Then he says in the meantime the board asked for a probity assessment of the tender processes and he puts up the report as PM3. I would like you to look at please pages 88 and 89.

10 **MR MONTANA:** Page 18?

ADV VAS SONI SC: No, 88 and 89. Remember we are looking at the top right hand red numbers.

MR MONTANA: Yes, ja.

ADV VAS SONI SC: This is the report – and I just want to look at the last part because it is what concerns you: It says:

20 “Overall management in the board must take a decision to accept or reject the noncompliance with the policy for the two affected tenders reviewed. This recommendation has been discussed with the Group CEO and his response and action plan is reflected below.”

Is that correct that the matter was discussed with you?

MR MONTANA: Yes, Chair, this report was presented – was presented to management and I think that it is a

correct reflection of what happened.

ADV VAS SONI SC: Okay, if you look at page 89 then it says:

“Management’s response and action plan.”

And it says:

“After due consideration of the contents of this report from the internal audit consortium we are of the view that the two tenders are noncompliant and will therefore be cancelled.”

10 Was that your – was that management’s view?

MR MONTANA: Chair, we took that decision on those particular contracts, ja.

ADV VAS SONI SC: And then in the action plan it is said:

“We will design alternative tender procedures to acquire the equipment and the services required. Consequence management will be implemented accordingly.”

And the person responsible was yourself, Mr Montana, as Group CEO. Is that all correct?

20 **MR MONTANA:** Chair, it is absolutely correct.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Then let us look at what we ...[intervenes]

MR MONTANA: Are we still on this point? Are we moving from this point?

ADV VAS SONI SC: No, we moving from it.

MR MONTANA: Can I make a quick point, Chair?

ADV VAS SONI SC: Yes, no of course.

MR MONTANA: Chair, you see – and that is why – you know, the way this evidence comes here is equally very important.

My annexures, Mr Soni, to this matter, actually I present the interaction between PRASA and the what is called the probity officers. Okay? Including where some
10 of the observations by the probity officers were either incorrect or they were not right ...[intervenes]

ADV VAS SONI SC: But sorry to interrupt you. I understood you to say there were no probity officers at the time, so I am just trying to understand how your correspondence would be with nonexistent persons.

MR MONTANA: No, no, Chair, I think did not understand me. I said before Popo Molefe even came to PRASA we appointed the probity officer for the big projects that were there. What I said was that when we had this specific
20 meeting the probity officer's contract had actually expired.

ADV VAS SONI SC: Yes.

MR MONTANA: So that is the point I am making. And therefore there was already a process undertaken to ensure that the – what is it called, it is extended beyond that time because the services were still needed or

required at that point in time.

Now when the probity officers continued with their work and interacted, Chair, there is five other reports on this very matter and I would want to urge the Commission that do not base this thing only this report because actually there was even areas where there was consensus between management and the probity officers on what needs to be done, and by the way I attached this very report Chair and I quote – go back to page 88 Mr Soni, I
 10 quote, you know it says the – what do you call it, the probity officers it is an overall, management at the board must take a decision to accept or reject a non-compliance with a policy for the two affected tender reviews.

Now Chair these are professionals, if they knew that this tender is corrupt they will never make that recommendation, they will say it is a corrupt tender for throughout the documents that I have reviewed after Mr Molefe had been making assertions of corruption, none of the reports, Chair, on Braamfontein, on – because non-
 20 compliance and irregularities Chair, I want to come back to that, it's not corruption and here are the auditors saying, we are picking up areas of non-compliance. For example, one of the - I want to point the thing. We advised that there should be a workshop for the CSFC which is a Cross Functional Sourcing Committee prior to the sitting for

evaluation to ensure that there is guidance for them around the sourcing criteria for consistency. So, they're identifying an important control issue to say that if members of the CSFC cannot go in a proper way and there's no consistency then there's going to be a problem with this tender. They are not saying there is corruption, then Mr Molefe runs ...[intervenes].

ADV VAS SONI SC: No, no, you must answer my questions, I'm sorry Mr Montana, but I'm not dealing with
10 what Mr Molefe said, I'm dealing with what is in this affidavit and that's all I'm asking you about.

MR MONTANA: Yes, but in this affidavit...[intervenes].

CHAIRPERSON: I'm sorry what was the question Mr – just remind me, Mr Soni?

ADV VAS SONI SC: The question was, does he accept what is reflected at pages 88 and 89 of the report.

CHAIRPERSON: And he said he accepts.

ADV VAS SONI SC: He accepts it.

CHAIRPERSON: Yes.

20 **ADV VAS SONI SC:** Then he says, are we finished with this point because I want to come back to it.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And the fact is, nowhere in any of this process, Chairperson, is there any allegation of corruption. Now I have little – I have full sympathy for Mr

Montana wanting to say, but let's accept that even if it was non-compliant, it doesn't mean it was corrupt and that must be placed on record, but we can't go on revisiting documents that are before us Chairperson, because it will be an endless process.

CHAIRPERSON: Yes, no, no but Mr Montana, what was the point you wanted to add, just let me hear what the point was?

MR MONTANA: Chair, I think we're missing each other.

10 **CHAIRPERSON:** Yes, you may be, I just want to...[intervenes].

MR MONTANA: Let me explain Mr Soni because I don't want us to fight about unnecessary things, but they are very important.

CHAIRPERSON: Yes.

MR MONTANA: You see, Mr Soni presents – here's the report Chair, he's presenting it to confirm what Mr Molefe presents – states in this affidavit, so these are Annexures, they're not Mr Molefe's. Now, if you look at this pack and
20 you look at both...[intervenes].

CHAIRPERSON: The affidavit.

MR MONTANA: Both the affidavit as well as the testimony, so we need to have the transcript Chair, Mr Molefe actually – in the transcript he goes in much greater detail, so it is not evidence in a newspaper or in the media,

it's what he said when he first testified, in Braamfontein there was corruption and everything, Chair...[intervenes].

CHAIRPERSON: Oh, that's why you then...[intervenes].

MR MONTANA: That is why Chair because you see in the transcript he is actually suggesting in the testimony here, that there was wrongdoing on the part of – and that is why the insinuation I dealt with, ...[Indistinct] wanted this thing to be dealt quickly and leave PRASA and then the spoils of the ...[indistinct] that flow Chair, and I cannot leave that
10 point because this thing here, Chair, auditors – I mean I think that I will report them to the professional body if they found corruption but they still say it is the Board, the management that must decide whether to accept it. They are talking about a compliance issue, not a corruption issue.

CHAIRPERSON: Ja, no, I think that it's a fair point for Mr Montana to make if he says in connection with this transaction, in his oral evidence Mr Molefe said this was corruption but when you look at the documents he relies on
20 they don't support the allegation of corruption, they just say it's non-compliance and you can accept, Mr Montana, that both Mr Soni and I understand the difference between something that's irregular because sometimes it is irregular but there is corruption but sometimes there is no corruption it is just irregular.

MR MONTANA: Indeed Chair.

CHAIRPERSON: So, you can accept that, that we accept ja.

ADV VAS SONI SC: Yes and we must accept that Mr Montana must place on record that what is before us now, there is no suggestion of corruption, it is things Mr Molefe indicated that there's corruption, he denies it.

CHAIRPERSON: Ja, no, no and we want to hear what you have to say about this thing. So, the only difference is that
10 we might just go in a certain order, but in the end where you feel that there is a certain context that might be lost, ask to make the point and then if we think it should be made later we'll talk but in the end you will get a full opportunity to make the points you want to make.

MR MONTANA: Chair, I'm smiling because you see, in the ANC on the ground my job was not to carry firearms, it was on propaganda and always say something that matters that materially affects the people.

CHAIRPERSON: H'm.

20 **MR MONTANA:** And I earlier on, indicated about the MTN thing which I said was a lie. Let me explain to you what this thing means, Chair so that this Commission has an appreciation of what it means in congruence. Chair, when this thing, this tender was cancelled in Braamfontein the President went to Nigel in ...[indistinct] where we built the

factory, not any other person, us okay. This modern factory to build trains, the trains, Mr Soni, they start to come into the system. Five years – six years after I'd left, Chair, despite the fact that the money was there, PRASA has not been able to build a single depot, okay. Chair, what it means is that, as trains are chartered, they can't even be deployed ...[indistinct] in Soweto or Kwamashu or in Khayelitsha or in Bonteheuwel is actually not able to get the benefit of this investment because these trains can't be
 10 used. So, I think that the – when you play political games this is the result of what you have, Chair. Now here's a report that tells us that it was within – the Board had to use its prerogative to proceed or not and if he says that the irregularity or non-compliance is material or not, they must make that decision, Chair.

CHAIRPERSON: H'm.

MR MONTANA: But five years down the line we have invested over R50billion to buy new trains and most of them come today, six years after I've left PRASA, they
 20 can't come into the system because some report is elevated above any – the requirements of the economy and ordinary people accessing job opportunities, this is what we have [speaking in vernacular], Chair.

CHAIRPERSON: Okay.

MR MONTANA: People are going hungry that's what I'm

saying.

CHAIRPERSON: Okay, alright, let's continue.

ADV VAS SONI SC: I can't let this go, Chairperson, I don't want to – Mr Montana the problem on that issue, and I don't want to address it in your absence. The problem about what you've just said now is, you, at pages 88 and 89, concede that a tender must be reissued, must be...[indistinct – dropping voice]. So that is – you are part of that decision making process, it may have been a wrong
10 decision and you're entitled to raise that, but you can't raise it on the basis that, see, because of my absence – because you were part of that decision making process. I'm just putting that on record.

MR MONTANA: I don't understand, Chair, I don't understand this point being made.

CHAIRPERSON: H'm.

ADV VAS SONI SC: Okay, I've made my point...[intervenes].

MR MONTANA: Not because I reject it, I'm just saying, I
20 can't follow.

CHAIRPERSON: Yes.

MR MONTANA: I can't follow what Mr Soni is saying that's what...[indistinct – dropping voice].

CHAIRPERSON: Well, maybe just repeat it Mr Soni, because I wasn't sure also, just repeat it?

ADV VAS SONI SC: As I understand the mask that you've seen, you said on account of this report we are losing billions of rand, is that correct?

MR MONTANA: No, I'm not saying that.

ADV VAS SONI SC: Oh, okay, then I misunderstood you.

MR MONTANA: I'm not saying that I'm simply saying that here's a report which has got a whole range of other fact and information to it. A tender is cancelled, Chair, and somebody, of course, tells the Commission about how
10 irregular, lack of controls and all sorts of things and then six years down the line, I'm not saying – I was part, I was there but when the Board took a decision on the 23rd of December 2014, Chair, Martha Ngoyi was sitting in my position, I was not at PRASA – I was not there but I'm not disowning that position. I was the CEO of PRASA, and you'll see in my statement and in my affidavit that I say, I come before this Commission to take accountability and I take full responsibilities, and Chair, you know this thing, I happen to know it from the tip of my hands. When
20 somebody plays games, like what is happening with this affidavit, I know I'll be able to point it and, in this instance, I'm saying Chair, I'm still repeating Mr Soni, Popo Molefe didn't assist the Commission, actually was trying to drive it towards a particular direction and I – one of the things I'll be able to – I should be able to do, to assist the

Commission, to get the two facts. The Chairperson will assess, based on what he has said, based on what has been said in the evidence and come to a determination, Chair, I'll respect that.

CHAIRPERSON: No, that's fine.

ADV VAS SONI SC: Then, at paragraph 23, Mr Molefe says that as a result, and I know you've disputed the fact that he asked for the probity report or that Mr Buthelezi tried to push this, that's the point he makes at paragraph
10 21, but paragraph 23 he says,

"That he was of the view that there was too much power concentrated in the office of the CEO",

You don't have to – I'm just placing that on record. Then he says, if you look roundabout four lines or five lines,

"Accordingly, the Board withdrew from Mr Montana, Chairpersonship of the subsidiaries and appointed Chairperson's from within respective subsidiaries to lead them",

20 Did that happen?

MR MONTANA: Chair, when I left PRASA I was still the Chair of the ...[indistinct – dropping voice].

CHAIRPERSON: Don't speak too far away from the mic.

MR MONTANA: I'm sorry Chair, I'm saying when I left PRASA I was the Chair of the two subsidiaries, Group

CEO, there's a good reason for that Chair. So, this is the view that Popo Molefe is advancing. I want to ask Mr Soni, you know, 23.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Paragraph 23.

MR MONTANA: Paragraph 23 Chair, I want to make two points. Is this fundamental to the collapse of PRASA today and I want the Chair to have an appreciation of that. Chair, every year, when I started at PRASA, at SRCC
 10 before we formed PRASA, my delegation of authority was R20million. When – later on the Board had increased the delegation to R50million and it went to R100million. Every year, as a requirement Chair, we are assessed both on the issues of materiality's and significant framework of the business, the level of spending and the level of investment so that you don't want the situation where the Board comes everyday to the company because Management is not able to make decisions. So, if you look at the R100million, Chair, at that time was appropriate for PRASA and this was
 20 approved by the Board, was reviewed annually as it were. Now, there are two lies Chair, that are being told in this thing. Mr Montana was a one-man-show, he's not using so many words, he didn't consult. Chair I think the Committee should summon the minutes of the PRASA Exco, the level of debate and discussion and you know, Chair, when the

Board delegate R100million to me, in turn I had to delegate R25million to the CEO's, R10million to the Group Executives. So, if we talk about PRASA, anything below R25million I didn't see Chair. Anything above R100million went to the Board. Now, let me tell you a story, Chair...[intervenes].

CHAIRPERSON: I'm sorry, Mr Montana, I don't know whether it's you or me. I thought, much earlier you said your delegation of authority was R100million?

10 **MR MONTANA:** R100million Chair.

CHAIRPERSON: Okay – oh it's just an example when you made – talk about R100million and R25million, you've been talking...[intervenes].

MR MONTANA: No, no sorry, Chair, I may have made a mistake I'm referring to R100million, it still remained R100million when I left but I'm simply saying that delegations of authority are not numbers that are thumb sucked they are made because you want operational efficiency, you want decision making but still the Board
20 can't abdicate its responsibilities. That is why, even if a contract is R5million they pick up that it is a problem, the Board says, CEO not even in your delegation of authority but in the delegation of authority down there something wrong is happening. So, delegation doesn't mean abdication, Chair, it's very important. Secondly, I'm saying

Chair that, I wanted to tell you a story how this issue, what Popo Molefe and them did at PRASA because of this thing in 23 and it's part of the Annexures I've submitted. One of the things that is vital to running trains is issues of maintenance and availability of components. Maintenance, very vital for railways, Chair what happens that because there is this – this Montana is powerful the Board comes and cuts the delegation of authority to the CEO but because they want to control, also, what gets approved in
10 the business, they then terminate the delegation of authority to people who run trains on the ground. I never – I held people accountable, Mr Soni, but I will not go there and say, you are buying this component, that delegation must be given so that we can hold people accountable. There's a report of PRASA people, which is part of my affidavit, Chair, it actually shows that the reason why the number of available trains that collapsed in the country, is because people in the depots are not actually able to buy even the smallest spares because everything is approved
20 at the head office. So, it's inappropriate, here's a Chairman who comes and tells this Board – so it tells this Commission that you know, R100million Chair, in the context of a company that must spend R15billion on capital a year is a very small amount of money but if you look at how they've destroyed PRASA because of this

irresponsible thing, which is not having any scientific or management basis you want your people, so that when a train, particularly an old system like Metrorail. Chair, people come from overseas to ask me, hey man, this thing is old but how do you keep it running okay because I had to make sure that at least, out of 100 trains 85 of those trains run and my people if they don't do their work at the depots, they've got delegations to get the right components and everything. Popo Molefe comes, scraps this thing and
10 what you have is a situation where the country today, Chair today, the country can't run 70% of the trains that I ran, okay. I ran the number of trains, held people accountable, Chair, I think maybe I should request one day for you and Mr Soni during lunchtime, let's go to Park Station and you see the disaster, in three years, what it took us to build in 10 years, the Board of Popo Molefe destroyed in less than three years Chair and they are not held accountable. Let me make this final point, Mr Trevor Manual was here Chair, when he testified, I think it was September 2018, he made
20 a very profound point, he said – and I think he's one of the reasons why I agreed to tell you, he said, Chair, it's very important that we go back and look at what happened at that time. You see now people say, State Capture, corruption and then you get confused. Let's get to the detail, why were trains running at 84/85% when Montana

was there. Why today, we can't even run trains at 20%, because they came and break this thing in the name of fighting State Capture and corruption. It's wrong Chair, let's turn this thing, my statement today, is an assertion I'm challenging this false notion because I think we're going to destroy the country and I see it happening with other State owned – so this 23, if this Commission were to accept 23, Chair, I think that this country is going to go to the dogs, excuse my French Chair.

10 **CHAIRPERSON:** Okay, I think we are at three minutes past one, I think we should take the lunch adjournment, or did you have a question that you wanted to ask?

ADV VAS SONI SC: I just wanted to finish this, Mr – in paragraph 23 all that was said was, that he had removed, from you, the Chairpersonships of the subsidiaries, you are saying that that's false?

MR MONTANA: No Chair, I know that they were discussing the...[intervenes].

ADV VAS SONI SC: I'm just asking, was it false?

20 **MR MONTANA:** No, no Chair, I don't want to use the word, false. Chair, the Board of Popo Molefe had said, in line with what they are saying here that in their view, the Group CEO Chairing subsidiaries, okay but I think by the time I left PRASA they haven't affected that particular decision and Chair it's an opinion that he has but I

think...[intervenes].

CHAIRPERSON: Yes, but just at a factual level, I think that's what Mr Soni's asking for. When they say they withdrew your Chairpersonship of the subsidiaries, is that true?

MR MONTANA: No, no Chair, when I left PRASA I was still chairing the Board.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Of Auto Packs and Inter Site as it
10 were ja.

CHAIRPERSON: Did they – but at that time were you Chairing the same number of Boards of subsidiaries as you had been Chairing when they – when Mr Molefe's Board came or had the number reduced?

MR MONTANA: No, Chair, there are two subsidiaries at PRASA, the others are divisions inside the Board, so, I was Chairing these two and there's a particular reasons why...[intervenes].

ADV VAS SONI SC: And that never changed until before
20 you left, that did not change?

MR MONTANA: Ja, I'm saying Chair, I'm saying that the Board of Popo Molefe, in their discussions, I accept that point, they've raised the issue of, if the CEO – that is why I say, in the Board's view that did not make – that did not go well for good corporate governance. The Board of PRASA,

under Popo Molefe had that discussion and I'm aware of that discussion...[intervenes].

CHAIRPERSON: Yes, but in terms of actually withdrawing or...[intervenes].

MR MONTANA: No, it was never withdrawing Chair.

CHAIRPERSON: That did not happen?

MR MONTANA: I was never withdrawn Chair.

CHAIRPERSON: Okay, alright.

MR MONTANA: May in someone's imagination but when I
10 left PRASA I was – I left PRASA I was the Chair of the two subsidiaries, Chair...[intervenes].

CHAIRPERSON: Yes, and I guess there will be minutes of Board meetings...[intervenes].

MR MONTANA: There'll be minutes, exactly Chair.

CHAIRPERSON: Ja.

MR MONTANA: But, Chair, I'm saying this point at the bigger level, I'm saying this assertion as well it's so wrong Chair. If you want to run PRASA without running its real estate like many railway companies are doing then you're
20 going to destroy this company, Chair, and that's what we see. You need to align what you have property – you need to ensure that your property division or the property portfolio really supports this business. This was a destruction of value, so it sounds good, good corporate governance but in business in real terms congruently it

actually has a, what is it called, a – I didn't want to – the opposite effect. Whether it was intended or not, it's something else Chair, I don't want to debate that but I'm saying that I don't even agree with that view but yes, Mr Molefe is right that his Board did say, we do not think that, moving forward we want to have a situation where the Group CEO also Chairs subsidiary Boards and maybe that's what made people say that he thinks I'm a very powerful man.

10 **CHAIRPERSON:** So, you are saying, the Board did have such a discussion and took that view but while you were there, they did not implement that decision.

MR MONTANA: No, no Chair it was not implemented.

CHAIRPERSON: Okay, alright, I think we must take the lunch adjournment, we are at six minutes past one, let us resume at ten past two.

ADV VAS SONI SC: As you please.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV VAS SONI SC: As you please Chairperson. Mr Montana we had stopped at paragraph 23 can I just ask you to look very briefly at paragraph 24 where Mr Molefe says he

became aware that the Public Protector had released an interim report and he came – became aware of it through the press. Now just to ask a couple of questions around that issue.

When did you first become aware of the Public Protector's interim report?

MR MONTANA: I think the report could have been shared with us in May 2014. Ja I think around that time – April – May if I am – I cannot recall the exact date.

10 **ADV VAS SONI SC:** Now the point that Mr Molefe makes in the last paragraph of 24 that the board had not been aware of this, is that correct or had you informed them?

MR MONTANA: No Chair I think the previous board was fully aware and mandated me Chair to deal with this matter and PRASA had actually responded in a number of occasions – in a number of – there has been lots of correspondence within PRASA and the Public Protector and – but also I can – let me indicate that this is also not correct. Mr Molefe I do not know when he read the newspapers but he was informed
20 by me. I actually shared a copy of the – of the report with him. In fact later on I deal with the – with issues – the fights between myself and Mr Molefe relates to this particular matter.

So I actually 00:02:09 in the what you call the provincial report of the particular 00:02:16.

ADV VAS SONI SC: He comes to that in a moment. Let us deal with that because I think that is dealt with in the – in the next paragraph at paragraph 25 he says:

“In March 2015 I asked Montana – Mr Montana if he had received the PP report.”

Is that about the time you ...?

MR MONTANA: No Chair I think that – that happened there is no in March 2015.

ADV VAS SONI SC: Yes.

10 **MR MONTANA:** Ja March I think – Chair I think he may actually be – Mr Molefe may be right in terms of the date ja.

ADV VAS SONI SC: Ja. Then he says that:

“We need not deal with that because that is a personal matter.”

He says it looked like there was a bit of mistrust between the two of you that is his impression and I do not need you to comment on it unless you want to. Then he says:

20 “He then said that the Public Protector had issued an interim report and had posed several questions that needed to be responded to.”

Is that correct?

MR MONTANA: Chair the – the investigation by the Public Protector dates back to 2012.

ADV VAS SONI SC: Yes.

MR MONTANA: And you see in 2012/2013/2014/2015 there has been a lot of exchanges we had – we had already responded to – to all the issues. We had submitted even lots of files of tenders, contracts to the Public Protector to have a – to have a review of those.

ADV VAS SONI SC: Okay so I am – okay so I know because I have read the Public Protector's report the question I am asking is did you tell him that the Public Protector had posed questions which you had answered?

10 **MR MONTANA:** No Chair I think – I think that we understand these questions. When the Public Protector writes a report one of the things he then describe – define or describe the matter in detail and he depose in questions in detail so – so...

ADV VAS SONI SC: Sorry I do not want to stop you I think you misunderstanding my question.

MR MONTANA: Okay.

ADV VAS SONI SC: Mr Molefe is saying that you told him that the Public Protector had posed questions which were
20 being responded to that is all I am asking. Did you tell Mr Molefe that?

MR MONTANA: You know Chair I briefed him about this matter because it dates back to 2012. When the new board came...

ADV VAS SONI SC: No, no I am saying.

MR MONTANA: I briefed him about this particular issue yes.

ADV VAS SONI SC: Oh and then he says he raised this issue just before the memorial service of Minister Collins Chabane and he says - is that correct if you look at five lines from the top of paragraph 25.

“Because I raised the issue again later in March just before the memorial service of the late Minister Collins Chabane.”

MR MONTANA: No Chair I do not think the sequence is
10 right. The sequence is not right and I think that – no Chair I volunteered information to Mr Molefe not what is described here but I think the long and short of it I shared information with him and we did not discuss this Public Protector matter in detail and he reported – he reported the matter to the board to say there is this issue; it is being attended to and that is what it was left at until of course then there was a major dispute and I deal with it on this particular matter.

ADV VAS SONI SC: Okay. So let us just go on with what he says at the rest – in the rest of paragraph 25. He says:

20 “You then handed him a file containing the Public Protector’s I think the interim report.”

MR MONTANA: Ja let us call it the right word is provisional report.

ADV VAS SONI SC: Provisional.

MR MONTANA: Public Protector’s provisional report and I

indicated to him that as a company's management we are – we are responding to all those issues.

ADV VAS SONI SC: Yes. Now I am asking did this happen?

MR MONTANA: No, no.

ADV VAS SONI SC: Did you hand him the file just before the memorial service for Minister Chabane?

MR MONTANA: Chair no I think the – the – it could have been around that time because I know that when we went to the memorial service of Minister Chabane that is when I had
10 given him my letter that I will step down from my – from the position of CO.

If I recall when we had a dispute on this particular issue around early – early April so I think that in terms of time it may be more or less the same time but Chair I gave – I gave him the provisional report of the Public Protector. If the file refers to that I confirm that.

ADV VAS SONI SC: That is what he is saying as I understand it.

MR MONTANA: Okay.

20 **ADV VAS SONI SC:** You gave him – you gave him the report at the same time you gave him the letter.

MR MONTANA: No, no, no it could have been – it could not have been the same time. No that came after.

ADV VAS SONI SC: Okay.

MR MONTANA: The letter was just an envelope before we

went to the memorial service of the late Minister and I said – I actually – we would not even open it. He did not even know. I said Chair if you can read this – if you can have this as your bedtime reading.

ADV VAS SONI SC: Ja he says in fact that you suggested you read it – he reads it when he gets home.

MR MONTANA: Ja, no I think we may be confusing two things. I think both happened but I do not think they happened at the same time. There was a time I shared a
10 letter of resignation – my letter of resignation on the 15th of March and then later on we had – we had for example I think we had the memorial service and then before we – a few days or a week later we went to the funeral in Limpopo and I think we were both at the office so those – I think it is more or less the same – the same time ja.

ADV VAS SONI SC: Okay. They – I mean in essence we can say there may be a difference of a week or so but all of that ...

MR MONTANA: Happened ja. I can confirm that.

20 **ADV VAS SONI SC:** Then he says in the letter you indicated that you had elected not to renew your contract when it expired at the end of March – no it says there 2015 that is obviously 2016?

MR MONTANA: No 2015 ja.

ADV VAS SONI SC: And that you were resigning for

personal reasons, is that what your letter said?

MR MONTANA: Yes that is what my letter stated ja.

ADV VAS SONI SC:

“I presented the resignation he says Mr Molefe to the board which accepted Mr Montana’s resignation but asked him to continue to work while the board searched for a replacement.”

And then he attaches a copy of the letter.

10 **MR MONTANA:** My letter of resignation?

ADV VAS SONI SC: No, no a copy of his reply to your letter of resignation. That is what PM4 is.

MR MONTANA: Oh that is my – that is his letter.

ADV VAS SONI SC: That is his letter.

MR MONTANA: For me.

ADV VAS SONI SC: To you confirming the board’s – it is very interesting Mr Soni that he tells us about the board’s response. Did he attach my letter of resignation?

ADV VAS SONI SC: No he did not.

20 **MR MONTANA:** And let me – I asking that for a reason Chair. When I resigned from PRASA and my letter is there I think it is part of the record already. Yes I think at some stage you asked Chair but you see the letter of resignation. I said my contract provides for me to – provides for a three months’ notice period but I said to Mr – I said in the letter to

the chairman I do not want to do three months.

I said my contract provides for that but I would asked the board to find a suitable replacement and I am prepared to spend six months so that their new CO can understand PRASA and what drives it, its logic and everything.

I offered that in the letter. So it is not – it is not the way he puts it. Of course in the letter of response they did say the board reserves the right to say look we do not serve your notice period but I offered the board Chair and I
10 explained to the board. I explained to Mr Molefe.

ADV VAS SONI SC: Yes. Now...

MR MONTANA: If – if in my letter that if I leave in the middle of all these major changes there are going to be difficulties.

ADV VAS SONI SC: In fairness to Mr Molefe I have got to place this on the record when he gave the evidence he did place that on record you had indicated you were prepared to stay for six.

MR MONTANA: But I offered – I offered the board yes.

20 **ADV VAS SONI SC:** Yes. But can I just ask you quickly to turn to PM4 which is on page 147?

MR MONTANA: 147?

ADV VAS SONI SC: 147. You will see in the – in the first paragraphs he acknowledges receipt of your letter in the second paragraph.

CHAIRPERSON: I am sorry do you want to first announce what document it is Mr Soni?

MR MONTANA: Oh I am sorry.

CHAIRPERSON: Ja from who to whom and about what and what date it is?

ADV VAS SONI SC: Yes I will I am sorry Chair.

CHAIRPERSON: Ja for the record.

ADV VAS SONI SC: Yes.

CHAIRPERSON: It is much easier so we identify it on the
10 transcript when...

ADV VAS SONI SC: Mr Montana would this be correct that this is the letter which is dated the 1st of April 2015 in which Mr Molefe responds in – to your notice of termination?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: Now in paragraph 2 he says that the board accepts your resignation and the point you made is that you had given them the extra time but what is significant here and it relates to something we talked about earlier is what is contained in paragraph 3 of the letter. He says:

20 “We will communicate further with you in
 regard to specific measures that we would
 like to introduce concerning your authority
 during the notice period until separation.”

Then he continues.

 “The specific aspects of your authority that we

may wish to regulate for example concern

1. Your authority to make senior executive appointments. We would expect that you do not make any further appointment regards express authority of the board in the present circumstances and your authority to approve significant procurement matters as we – and we would similarly expect you to raise these with the board in each specific instance.”

10 So this one time when he did curtail your powers I mean I am just saying that that earlier you had said in relation to the Chairpersonship of the – of the subsidiaries that that had not been done.

MR MONTANA: Ja.

ADV VAS SONI SC: But here it had been done.

MR MONTANA: Where – where are you reading Mr Soni?

ADV VAS SONI SC: I am – the third paragraph of page 147. The – the response to your letter of resignation.

MR MONTANA: But what is your question specifically?

20 **ADV VAS SONI SC:** No I am just saying that on this occasion there is a specific curtailment of your power. Is that correct?

MR MONTANA: Chair I am smiling Mr Soni because Chair I read – I received this letter, I confirm that. But it is a funny letter I must say because the letter describe or tries to

curtail what has not actually not been the truth.

Chair the – as Group CO of PRASA the delegation of authority was very clear from since the organisation was formed in fact from the days we had a South African Rail Commuter Corporation. The appointment of executives is a responsibility of the board. I recommend to the board.

So I think this letter and perhaps once I – Advocate Soni is done here I want to go back and make the point because you – you will not understand my letter and this
10 letter and what happened in the matter of the Public Protector report if you do not understand the background.

Why I decided to resign at that point and the relationship and the reasons I provide and what happened when I met Mr Molefe in Knysna. So – so the letter was served on me; it does curtail anything Chair.

I think you know Mr Molefe he would have loved to have the opportunity to either fire me, dismiss me or curtail me and he found that it is not possible in this lifetime Chair.

The issue is the executives were appointed by the
20 board so you right and say there is no executive that are appointed. If I had interviewed people I had to interview them with the – what you call the board's remuneration and HR committee of the board. We interview recommend to the board and there are times when between us myself and the board we do not agree on this particular appointment and

then I have to either convince the board that this is the right
00:16:38 you win some, you lose some that is the nature of
the 00:16:39.

And then of course – the approval of the contract.
Chair there is this thing that you can see that there is this
thing Advocate Soni – Mr Soni that – that I was approving –
what is the word Chair significant procurement matters.

No I have said earlier on in my testimony anything
below R25 million I did not touch. Anything above R100
10 million – 100 million at this time this was the situation.

So in real times the board had to say to me we are
changing the delegation of authority you can no longer
approve at 100 million or approve at 50 million. It was never
done.

When I left PRASA I still had the authority to approve
so this letter reflects rather a big fight that was brewing up
within PRASA and I – and I want to request that I be given
the opportunity just touch a bit on that so that we – we
understand the context.

20 **ADV VAS SONI SC:** In fairness to – and he is not here to
defend himself but I am not defending I am just placing
something on record. Because you are right that the board
could not curtail your powers so what he says here is:

“We would expect you do not make.”

He does not say you may not make he says:

“We would expect you do not make executive appointments or you – you do not approve significant procurement matters without the express approval.”

I am just placing that in context.

MR MONTANA: No, no I hear – I hear you and I agree fully there. Here is a letter but I am simply saying that why do you tell me about ...

CHAIRPERSON: You say it did not happen?

10 **MR MONTANA**: We did not – because it did not happen in real times. I had 100 million what is significant when I still approve 100 million. I did not approve – I did not appoint executives. The executives are appointed by the board. So this letter reflects something that I want to touch Mr Soni.

ADV VAS SONI SC: Yes.

MR MONTANA: To touch on sorry.

ADV VAS SONI SC: Yes. Well are you going to do that at a later stage?

MR MONTANA: Well I wanted – I thought when you are
20 done with probing this matter you give me the opportunity.

ADV VAS SONI SC: Okay. I am ...

MR MONTANA: Unless if you want me to do it now.

ADV VAS SONI SC: Ja so long as it is – it is going to be confined to the issue.

MR MONTANA: No, no I am going – it is a five days' well

and the young people like us we need to be 00:19:08 Mr
Soni.

Chair ...

CHAIRPERSON: There are still no parties is it not?

MR MONTANA: I am exposing myself here Chair.

CHAIRPERSON: Okay alright.

MR MONTANA: Chair the – the – I said earlier in my
testimony that Mr Molefe came to PRASA for a particular
reason. In his operation and me and him as I said we – we
10 used to interact so either basements of PRASA we talk ANC
politics and everything and sometimes he will say me
Comrade Lucky and I kept on reminding him no, no Chair I
am going to call you Chairman call me CEO and that you are
my senior or my leader, you are the same age as my father
so you cannot be my comrade even if in the structures we
want to treat people as required. That is what I did.

Now the point I want to make is that between
November and February there was very good interaction
including the fact and he does not say it in his affidavit Mr
20 Molefe brought in a lot of business people to meet with me
the CO at the offices in the 00:20:25 because other than the
mandate that was given when he was appointed in respect of
the contract Mr Molefe had his own personal difficulties that
I do not want to deal with here because that is not my
intention.

He brought and say can we help this one, can we help this one and all of those things. Chair for me I meet these people and I will not bring back and say he brought that and – no that is not the – what I will do is that when a leader says can you help I look at how I can help, other people I help, others I tell them it is not possible.

But we had the February board meeting and that is why you need to understand these three matters. In February board meeting the board of PRASA.

10 **CHAIRPERSON:** That is 2015?

MR MONTANA: 2015 Chair my apologies – 2015. Six or – six or six months after Mr Molefe had been in this board we appointed we had the meeting in the North West I think just closer to Sun City the board meeting for the year.

It was act – it was basically the first real meeting of the board after it came and had to attend to the issues about all these – the induction but I was unhappy with that board meeting. I spent a lot of time outside with the board having an in-committee meeting. Okay.

20 That is number 1.

Number 2 the board wanted to restructure somehow to restructured the business. It is a prerogative of the board I said that but the way it is done when you restructure business it is very important you must have all the information on the table and that information is done whether

you appoint a consultant outside or you ask management you do not just come and say now the approval for this we are placing there because you are running an organisation with a lot of interdependencies. So it is very important to understand that.

So I was unhappy with that. Now when they have and I think Advocate – Mr Soni I want also to – to advise you to also look at the – some of the statements made by Mr Collins Letsoalo which I think are relevant to – to my
10 particular matter.

So there was an attempt to change. I said to Mr Lindikaya who was the Company Secretary at the end of that board meeting I said today is a day I am leaving PRASA. I was not resigning in that board meeting of February but I have already noticed what was happening and I decided to leave.

But I did not want to fight Chair I wanted to leave in peace and I – that is why my letter is crafted in the manner that it is crafted so that when I leave there is still unity, there
20 is stability in the business. Already I have seen our executive management team being divided between people who are loyal to Popo Molefe who are loyal to me I did not want to do that. I wanted to leave in peace.

But I – I said that during the break Mr Soni to you that in African tradition when someone – your visitor leaves

– leave your homestead you assure them that I have tightened my dogs, do not worry, leave in peace. Okay. So that is what I was doing and Mr Molefe said – and when I left approaching the gate he then unleashed this terrible dogs okay to come for me.

So I had given him that letter. I was unhappy and I then gave effect to my decision to resign. But in my departure I did not want to create a fight with Mr Molefe or the board so that letter comes. This letter Chair and let me
10 remind you Mr Molefe had always said Mr Montana I want you to stay for three years because you are the one who understands this then can help us. Okay.

Now when I resigned he goes to the thing and I speak to board members who 00:24:25 he was agitating that Montana must leave. This letter was in my view when I received it I laughed it was trying to effect to what the board could not do in February meeting which is basically to restructure and take over certain things. So that is what they were trying to do.

20 Now let us deal with the Public Protector matter because it is relevant to that. It was – Chair I was in Cape Town there were two people with this interim report from the Public Protector. It was me and I had made a copy for Mr Molefe – the provisional report.

Then I got a call from the – from a journalist. There

was a Cape Town jazz festival PRASA played an important role in that event. The chairman and board members met in Cape Town and they were – so their board meeting where they – where they approved to accept my resignation was in April the 1st of April. I was happy with that.

But a day later a journalist from the Business Day calls me and say you are leaving because of the Public Protector report. I was angry I knew where it was coming from.

10 She was quoting the provisional report. I then called Mr Molefe he was in Johannesburg I was in Cape Town. Chairman I need to see you. Okay. He says no I am not in Cape Town I am in Joburg but I am flying to Knysna. I say I am in Cape Town I am going to drive to Knysna to come and see you Sir. I went to Knysna. I arrived the night before we met the following day at the – again at the golf club as it were. We sat there for a very long time.

 We had a meeting I think it lasted five to seven hours. And I said to Mr Molefe as I called him Dada Molefe.
20 I called this meeting because I was trying to be polite and leave in peace because I have sat in this organisation – I have done everything here there is nothing more to do. I do not need to remain here. But I have requested this meeting to tell you the truth after I got that thing from the journalist from the Business News.

We met. Chair I sat with Mr Molefe and I told him all the things – all the wrong things that he was doing from that period of time which I said these are the reasons. I did not want to disclose them. But today let me tell you he even said to me – and I said to him you are asking me to stay for three years but you are sharpening your spear to stab at the back. And I said to him I am not going to give you that privilege.

He used the words he said are you accusing me of
 10 being involved in a low intensity warfare. I said indeed Chairman you are – you are launching a very serious fight against me. I wanted to leave.

So – so I was angry with the fact that this Public Protector report there was no-one who had this report except me and Mr Molefe. I gave him the report and it end up with a journalist and you can see the campaign to start to put me in a bad light Chair. It dates back including what he said in that committee there – the committee in Parliament of Mr Mashatele.

20 So this has been an on-going systematic thing but I said – and I told him even Chair when I left PRASA Dada Molefe you are going to win the battle but you are going to lose the war because I will continue to chase you as and I do not want to do that as I respect Mr Molefe.

When I was here Chair even after he has attacked me

on this platform I was sitting there, I was polite, I greeted him, I greeted him but what I know is that Mr Molefe stands on the other side of the river, I stand on the end – the two of us even if there were a bridge to be built will never connect – we stand on different sides there are crocodiles in that river we cannot even attempt to meet each other.

So I have accepted that but if you do not understand that context you will not understand the three letters – the two letters – my letter to him, my letter to – his – the board's
 10 letter to me and how the Public Protector matter was – was dealt with. So that is the real context of these letters.

CHAIRPERSON: But when exactly would you say your relationship changed because at a certain time or quite some time you – you have said that you used your fingers to say you were like this I think you said.

MR MONTANA: No him and Minister.

CHAIRPERSON: Oh him and Minister

MR MONTANA: Minister Peters.

CHAIRPERSON: Ja you see people who have been given
 20 evidence here have been describing their relationships in different ways. Mr Koko was here and he said he and Mr Abram Masango were and as he put it tight you know like that. He said that is a township lingo they were tight.

MR MONTANA: Yes Chair.

CHAIRPERSON: But then things changed. So between you

and Mr Molefe you – you were fine you had a good relationship I think that is what you said.

MR MONTANA: Chair.

CHAIRPERSON: For some time.

MR MONTANA: Chair I think let me describe the relationship as – you know I respected Mr Molefe. I think we had a relationship.

CHAIRPERSON: H'm.

MR MONTANA: Because of the way he came to PRASA, I
10 knew.

CHAIRPERSON: H'm.

MR MONTANA: But I knew Mr Molefe, Chair. He did not – he probably did not know me because I – when I met him I explained to him. I said the first time I met Mr Molefe was when he was in – it was in court at the Delmas Prison Trial. I was part of the young people who went to court to support our leaders at that time.

When Mr Molefe and them were sentenced to prison, I was outside the court on that particular day.
20 When they went to Robben Island and they appealed, I was part – before they were sentenced, Chair, there was a big meeting at the Johannesburg Central Methodist Church in 1988 where we had the solidarity meeting which was disrupted by the police.

So I have seen this man, the big man that I

respect as part of the leaders in the thing. When they were released from prison, they still actually were wearing prison clothes, Jan Smuts Airport, not O.R. Thambo. Young kids will not know that that was the Jan Smuts Airport.

CHAIRPERSON: Yes.

MR MONTANA: We were the youth who were carrying them and singing and celebrating... So when he was appointed as Chairman I said we are – I am happy to have
10 this man but I knew that there was this other reason why he was appointed, but I tried to work with him.

CHAIRPERSON: H'm. By the February meeting, 2015, was your relationship still fine?

MR MONTANA: Chair, it was on a descent.

CHAIRPERSON: Ja.

MR MONTANA: We were on a downhill.

CHAIRPERSON: Okay.

MR MONTANA: But we were – I think the relationship was decent. But after April ...[intervenes]

20 **CHAIRPERSON:** Ja.

MR MONTANA: ...the relationship between myself and Mr Molefe ...[intervenes]

CHAIRPERSON: Became hostile.

MR MONTANA: ...became hostile.

CHAIRPERSON: Ja.

MR MONTANA: We were not seeing eye to eye. We were not planning board meetings together.

CHAIRPERSON: Yes.

MR MONTANA: We were doing things together as required.

CHAIRPERSON: So that meeting at Knysna was the ten point?

MR MONTANA: Chair, what was ...[intervenes]

CHAIRPERSON: Is that not the meeting where you say –
10 where you – I think you did not use the word but it looks like you confronted him.

MR MONTANA: Well, I did not confront. I was polite, Chair.

CHAIRPERSON: Oh, okay.

MR MONTANA: But very ...[intervenes]

CHAIRPERSON: Firm.

MR MONTANA: Very firm.

CHAIRPERSON: Ja.

MR MONTANA: I made it very clear and said this is the
20 situation and I want you to know that I ...[indistinct] but I was not going to fight with him because the decision to leave PRASA was my decision alone and everything. And he kept on saying – Hey, Chair and he - you remember they placed him with Minister Dipuo regarding the meeting with the President.

CHAIRPERSON: H'm.

MR MONTANA: Chair, our relationship collapsed and much completely now after that meeting. It was my decision instructing PRASA Technical CEO that he must cancel the contract of South African Fence and Gate. That company failed to deliver on his contractual obligation yet ...[intervenes]

CHAIRPERSON: Okay do not go into details now.

MR MONTANA: Indeed, Chair.

10 **CHAIRPERSON:** Around ...[intervenes]

MR MONTANA: [Indistinct] ...[intervenes]

CHAIRPERSON: ...that was happening roundabout when?

[Parties intervening each other – unclear.]

MR MONTANA: This was around April/May 2015.

CHAIRPERSON: Okay alright. Thank you.

ADV VAS SONI SC: Mr Montana, I am afraid I am bringing this up and I really again, I do not want to say something when you are not here. As I understood your answers to the Chairperson's questions. You know two points. One is
20 you worked together with him but you made the second point that you were aware that Mr Molefe had been appointed to get rid of you. Now, is – have I understood correctly or did that something – is that something that developed in his mind later?

MR MONTANA: Chair, look, I did not use those words

because I did not know whether it was explicit but I think the point here is that I was committed to work with him. He – I think that he decided that he is going to take a different path(?). There were actions. I mean, the cancellation of the - what is it called – the contract on the – or rather the tender on the Braamfontein modernisation

He had a lot of time(?). He was actually even out of town when the board meeting was set, but that is not how you run companies because you want a CEO to do
10 things in a particular manner.

ADV VAS SONI SC: No, no. I am not trying to stop you. Do not forget my question. My question is a slightly different one. Did you have the impression, whether you put it in so many words or not, that one of the reasons Mr Molefe had accepted the appointment or was appointed as Chairperson of the Board of PRASA was to get rid of you?

MR MONTANA: No, no, Chair. I would not say that, no. I would not say that.

20 **CHAIRPERSON:** If you – I understood you to say suggest that he was brought in to ensure that what you and your management were no prepared to do was done in terms of the, I think, cancellation of a certain contract or award?

MR MONTANA: The award to the Tegeta contract.

CHAIRPERSON: Yes. I understood you correctly.

MR MONTANA: Yes, you understood me correctly.

CHAIRPERSON: Ja, okay alright.

MR MONTANA: But whether that will mean me being fired or ...[intervenes]

CHAIRPERSON: Ja, that is something else. Ja.

MR MONTANA: ...or me leaving the company, it is something else, ja.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Now you have already dealt with the
10 Knysna meeting which is addressed at paragraph 28. Now he says there that in addition to make a litany of complaints – and you have indicated what some of those are – you also attacked Minister Dipuo Peters. Is that correct, at that meeting?

MR MONTANA: No, Chair, that is not me. That is not me. I am very forthright and direct but attacking people, it is not me Chair.

ADV VAS SONI SC: Okay. Now you might remember my question to you a couple of minutes ago. If you look at
20 paragraph 29, it is informed by the following.

MR MONTANA: Let me go there Chair.

ADV VAS SONI SC: Paragraph 29.

MR MONTANA: 29?

ADV VAS SONI SC: It is 29.

MR MONTANA: 29.

CHAIRPERSON: That is page ...[intervenes]

ADV VAS SONI SC: Page 9.

MR MONTANA: Page 9.

ADV VAS SONI SC: Paragraph 29.

MR MONTANA: Okay.

ADV VAS SONI SC: He says:

10 “At this meeting in Knysna, Mr Montana
 accused us of conspiring [that is asking the
 board] of conspiring with Minister Peters to
 work against him...”

 Now, obviously, you are saying that did not
happen.

MR MONTANA: Chair, in Knysna ...[intervenes]

ADV VAS SONI SC: Yes?

MR MONTANA: ..that is not what we discussed.

ADV VAS SONI SC: Okay.

MR MONTANA: But, yes, subsequent to that, I think that
we did after I have met the Minister on two different
occasions.

20 **ADV VAS SONI SC:** No, I understand.

MR MONTANA: Ja.

ADV VAS SONI SC: But then he goes on to say:

 “In his view, the board had been appointed
 with the express purpose of getting rid of
 him...”

Did you tell Mr Molefe this at the Knysna meeting?

MR MONTANA: Not at the Knysna meeting, Chair, no. At the Knysna meeting, Chair, I spoke about our report getting to the journalist, the provisional report, and that he was telling me to stay but he was carrying a dagger.

ADV VAS SONI SC: Yes.

MR MONTANA: If that is what he was trying to describe than that is correct Chair.

10 **ADV VAS SONI SC**: Okay. Now you said that you did not tell him this at the Knysna meeting. Is there on any occasion when you told him that the board had been appointed with the express purpose of getting rid of you?

MR MONTANA: Chair, we have had a lot of interactions including in writing, in black and white, and I cannot recall specifically saying that to Mr Molefe.

ADV VAS SONI SC: Alright.

MR MONTANA: But I know the situation had deteriorated and we were throwing – we were going at each other in a
20 very big way. Ja.

ADV VAS SONI SC: I see. Let me ask you this. You may not have said it to him but did you ever entertain that notion that Mr Molefe had been appointed as chairperson – sorry – and his board had been appointed for the express purpose of getting rid of you?

MR MONTANA: Chair, I was very suspicious of the appointed of three people...

ADV VAS SONI SC: Yes.

MR MONTANA: Because the appointed, I have regarded as irregular. The entire Board of PRASA was advertised by Minister Dan Martins and then he was replaced as a Minister with the Cabinet reshuffled. Minister Dipuo came in. She took all the people that were nominated through a public process. They were all nominated by members of
10 the public. There were three people that were brought to that board, Ms Molefe, Ms Zoto Manase and Ms Willem Steenkamp. And if you understand, again there is a context to this to understand why they were brought in but ...[intervenes]

ADV VAS SONI SC: I am sorry. We will come to the appointment of the board on a different occasion.

MR MONTANA: Yes.

ADV VAS SONI SC: I am asking, slightly, a different question. I am saying, did you entertain that thought in
20 your mind? Because now we have mentioned three board members. As I understand it, there were 11 board members. Because the idea here is that the board had been appointed to get rid of you. Now this is three out of 11.

I am just trying to work out because in some

ways, Mr Montana, I need to be fair to you. Is the stop-shop-dispute(?) [Speaker moves away from microphone and not clear] between you and Mr Montana – I mean, Mr Molefe?

At some stage, I will have to make submission to the Chairperson and the Chairperson at a later stage would have to make a decision. We would have to base – I – my submission and the Chairperson his decision based on all the information that we have been able to out from the
 10 different witnesses. But I just want to know in respect of what your view is about the purpose or one of the purposes of the appointed or...?

MR MONTANA: Chair, in my affidavit and in the statement that I presented today, I make mention of the fact that the Board of PRASA led by Mr Sfiso Buthelezi was – the term of that board was coming to an end. So naturally there was going to be the appointment of a new board, whether Mr Buthelezi and members of – some members of his board will continue in that role, I think is neither here nor there.

20 The issue is that there were an introduction of the appointment of Mr Molefe, it had to do with – excuse me – with what the Minister had said to us in a meeting, where he said that: I am going to bring Mr Popo Molefe. And tell you, Mr Buthelezi was in a meeting. He said to the Minister: I am a deployer of the ANC. I will respect

every decision of the ANC.

My response was also very simple. I am the CEO of PRASA. So usually it is the prerogative of the Minister in Cabinet and we respect of that process but there is a CEO – if you facilitate a hostile takeover, you bring in people that I think they are now going to play a positive role.

And this I did not bring with – I did not want to say to Minister Peters, I have also said it to Minister Ben
10 Martins when the Gupta wanted to change the board of PRASA. I said if you bring people to change, to takeover, as the CEO I have got a right not stay and to leave. Now, Chair, the two – there is a fine line between the two.

So I am saying that Mr Buthelezi – and I think you – the Chairman of the PRASA Board will come and speak for himself about that process because he kept on briefing me on what was happening, especially between the – with the conversation that he had with Minister Dipuo.

Now if you bring that into account, you actually
20 realise that the appointment of these three specific people and how the ...[indistinct] Chair, I try to avoid dealing with that issue. In my earlier statement I said there word of brought-in was actually a – what is the right word for this abuse – this collaboration between three specific people, okay?

And let me mention their names so that we can make things much simpler. Chair, the problems of PRASA starts when in February 2014 the Minister of Finance delivers his budget speech and casts a lot of suspicion and in fact suggested that the PRASA rolling stock programme was a corrupt programme.

And that is why you will see in my affidavit, I take that issue at great length because we have been having big fights with Minister Gordhan in respect of how
10 to run the new relation(?) of problems when he was still Minister of Finance. He tried, in my view, to control the programme, to take over the control and I – to take over the running of the programme and most importantly he acted in violation, in my view, of Cabinet decisions and he violated his powers as the Minister of Finance.

In 2014, two years after we have gone now to the market and issued the RFP, the Minister of Finance had to sign in gazette this programme. Chair, for no objective and sound or rational reasons he was brought in that
20 particular process, okay, as the Minister of Finance until, of course, his term ended with the elections in May 2017.

Then there was – then Minister Dipuo Peters was brought in ...[intervenes]

CHAIRPERSON: That is in 2014?

MR MONTANA: Sorry, in 2014.

CHAIRPERSON: Ja.

MR MONTANA: So the budget speech was – but my letters, my annexures Chair, which is a source of debate, shows the ongoing fight which involved PRASA and the Minister of Finance and the Minister of Transport in respect of this particular programme. PRASA is where – is precisely because of that and I detail that in my affidavit.

Then there was Minister Dipuo Peters. Then there was a third man, the Treasurer General of the ANC,
10 ...[indistinct]. Now each – these three people, Chair, they were telling Buthelezi that the deployment of the – by the ANC... No, Chair, the decision about the appointment of this – of these three people into the board was the decision of the interaction between the three people, okay?

And that is why in my affidavit – in my affidavit I respond – I actually take up the issue of the appointment of Mr Molefe and say: Tell us how you appointed? Who nominated you? How you came to the board? Let Zoto Manase told us. Let Willem Steenkamp tell us how he got
20 into that board Chair and it is not because...

So if there is a finding that – I will suggest, Mr Soni, that you recommend to the Chair, is that the process of appointment of board members, was it managed in a proper way, in a transparent way? Even if you have to manage government interest because there is a

shareholder in that business, that has to be taken into account.

But we are where we are because three people connived and they brought in people who played a leading role into that board and that is why we are here today Chair.

ADV VAS SONI SC: Mr Montana ...[intervenes]

CHAIRPERSON: Mr Soni.

ADV VAS SONI SC: Mr Montana, I just want to see if I
10 understand you correctly. You say - and I am not disputing it, I am not accepted it but I am not disputing it either – you say Mr Molefe, Ms Manase and Mr Steenkamp were appointed irregularly in whatever ...[intervenes]

MR MONTANA: No, I am saying that Chair in no uncertain terms, yes.

ADV VAS SONI SC: No, no I understand. But the fact that they were appointed irregularly does not mean that they were appointed to, in a sense, to get rid of you. That is – so that is what my question was directed.

20 **MR MONTANA:** Sure.

ADV VAS SONI SC: Not was it a properly constituted board.

MR MONTANA: Sure.

ADV VAS SONI SC: And so, I would just like again your answer on that. Was, in your view, the purpose of the

board or some members of the board to get rid of you forgetting whether they were appointed properly or not?

MR MONTANA: Chair, I think that is you comes after – you recall in my – excuse me – in my testimony early in the day. I spoke about our meeting in Cape Town. You know, Chair, and I described it in detail because I think Mr Soni ...[intervenes]

CHAIRPERSON: Okay let me interrupt you. Again, in the spirit of making sure we can make progress. I think what
10 Mr Soni seeks to do. I do know that you said earlier on that Mr Molefe – I do not know if you added Ms Manase and Mr Steenkamp ...[intervenes]

ADV VAS SONI SC: He did, yes.

CHAIRPERSON: ...was appointed with a particular purpose. Mr Soni refers to their appointment being irregular. So I am not sure whether you said that their appointment was irregular or when you said they were appointed or he was appointed for a specific purpose, that is the irregularity you were talking about?

20 **MR MONTANA**: Chair, the Board of PRASA ...[intervenes]

CHAIRPERSON: Ja?

MR MONTANA: ...the Minister ...[intervenes]

ADV VAS SONI SC: Sorry, Mr Montana. Could you ...[intervenes]

MR MONTANA: Sorry, sorry.

ADV VAS SONI SC: [Indistinct] [Speaker is unclear.]

MR MONTANA: The Board of PRASA ...[intervenes]

ADV VAS SONI SC: [Indistinct] [Speaker is unclear.]

[Speakers intervening each other – unclear.]

MR MONTANA: Board of PRASA – I said firstly, its time had expired.

CHAIRPERSON: With the board before Mr Molefe or ...[intervenes]

MR MONTANA: Before Mr Molefe.

10 **CHAIRPERSON:** Oh, the board before... Ja.

MR MONTANA: Yes, Chair.

CHAIRPERSON: Ja, its time had expired.

MR MONTANA: It was, ja. It was coming to an end.

CHAIRPERSON: Ja.

MR MONTANA: And you see, Chair, we are dealing with issues in the middle, unfortunately.

CHAIRPERSON: Okay.

MR MONTANA: Because of the nature of the issue there.

CHAIRPERSON: Okay.

20 **MR MONTANA:** And that my affidavit is not on the table.

CHAIRPERSON: Okay, okay.

MR MONTANA: In my affidavit I explain, in fact, what has happened and why I started to form certain opinions.

CHAIRPERSON: H'm, h'm.

MR MONTANA: Of course, to stop – to respond directly. I

do not know if Mr Molefe, Ms Manase or Mr Steenkamp were given a mandate that the Minister of Transport for those three or the other two people to say: You must get rid of Montana. But certain things happened afterwards which I think that would have given that – to made impression. Let us start first with the... I was working very closely with Mr Molefe but he goes to Parliament at the Committee on Appropriation. I hear for the first time, Chair, that ...[intervenes]

10 **ADV VAS SONI SC:** Yes, sorry. No, Mr Montana, I – we heard this earlier and so I am not trying to ...[intervenes]

MR MONTANA: No, I want to bring some other point which is very important, Chair.

CHAIRPERSON: Ja?

MR MONTANA: Which, unfortunately, is in my affidavit. Let me just go straight to it.

CHAIRPERSON: H'm?

MR MONTANA: So, we heard that earlier, yes, but for the first time I hear that there is a – there was investigation on
20 this big contract that the ministers had problem, Chair. Then after that presentation to the Appropriation Committee – and I – again, I detailed this in my affidavit – Mr Molefe leaves with the Chair of the Portfolio Committee who had attended the meeting of the Appropriation Committee.

And Chair, they leave. They go and have lunch after the – after we have been for the presentation. I also go in an opposite direction. The Chair of the Portfolio Committee had later that evening called me to brief me about what had transpired. And this I reported – it is in my statement to the Parliamentary Inquiry on Governance at Eskom.

Chair, the – Mr Molefe – that is why I thought Ms Magadzi, Dikeledi Magadzi, the Deputy Minister of
10 Transport he would have conveyed this to the committee during the testimony. He said on that very ...[intervenes]

CHAIRPERSON: But the point that you want to tell me about, Mr Montana, is the point to support what you say, namely, that you got an impression at some stage that they had been appointed to get rid of you.

MR MONTANA: But ...[intervenes]

CHAIRPERSON: But you are saying it is an impression.

MR MONTANA: Chair, but not when they arrived.

CHAIRPERSON: Ja, ja later. That is what I mean.

20 **MR MONTANA:** Over a period of time.

CHAIRPERSON: Ja.

MR MONTANA: Then a lot of things have happened ...[intervenes]

CHAIRPERSON: Ja, yes, ja.

MR MONTANA: ...including to what she told to

Ms Magadzi ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...that Lucky is there to steal for Zuma.

That is what they said Chair.

CHAIRPERSON: Okay, okay. That ...[intervenes]

MR MONTANA: And unless – if you look at my affidavit where I did tell these things, you then not understand... So, firstly, here is the – or the board has not taken a decision that he must investigate this particular
10 committee(?). It is mentioned in Parliament. I hear it for the first time. Three months into the term, who was appointed to do this investigation? What are the terms of reference? That is the first issue, Chair.

Secondly, the chair of the committee comes and says: Your chairman says there is going to be an investigation because you do work for – you are stealing – you are doing contracts for Zuma. And Chair, when you look at the documents – on Werksmans. Werksmans trust investigation. It is on the contract. And that is not a
20 coincidence of history. It is actually a roll-out.

So my impression, Chair. I think, under the circumstances, are well-founded. They are not just something where Mr Molefe arrive and I do not trust him. I see his actions, despite the fact that I say I respect to work with him, I see what he is doing. And it is reasonable

Chair.

CHAIRPERSON: Okay alright. So, basically, you are saying. You are not able to say definitively that the purpose of the appointment was to get rid of you but you say after some time you developed – you gained the impression that was the purpose?

MR MONTANA: That would be fair summation, Chair.

CHAIRPERSON: Ja, okay alright. Mr Soni.

ADV VAS SONI SC: As you please, Chairperson.

10 **MR MONTANA:** Mr Molefe in paragraphs 30 and 31 says, more or less, what you said that the relationship between you and him started to ...[intervenes]

MR MONTANA: I am trying to find the page.

ADV VAS SONI SC: Oh, sorry. Page 9, Mr Montana.

MR MONTANA: Page 9 of the ...[intervenes]

ADV VAS SONI SC: Of the affidavit.

MR MONTANA: Ja, okay?

ADV VAS SONI SC: Paragraphs 30 and 31. We can go – I mean, that is – it is what both of you seem to agree on.

20 **MR MONTANA:** Okay.

ADV VAS SONI SC: Alright. Then he in paragraph 32 he deals with the appointment of Werksmans Attorneys and says that that appointment was brought about because of certain recommendations made by the AG in his report. Are you aware of that, the appointment of Werksmans to

conduct the investigation that the AG report has required?
Are you aware of that?

MR MONTANA: Are you asking me about the appointment of Werksmans?

ADV VAS SONI SC: No, no. I am saying that the reason that somebody was appointed, not Werksmans themselves, was because the AG had required forensic investigations. Are you aware of that?

MR MONTANA: No, Chair. The only thing I know is that
10 the report of the Public Protector, of course, had recommended that contracts of R 10 million and above be investigated and then later the AG's office. Yes, I think did the – did make it on recommendation around that. I thought Minister Peters dealt with the issue about how to combine these investigations and all of those things.

ADV VAS SONI SC: Okay. So are you in a position to say that that is not the reason why forensic investigations – I am not saying Werksmans was properly – that is not my point. I am just saying that the appointment of forensic
20 investigators, according to Mr Molefe, is that the AG's report had required.

MR MONTANA: Chair, we are not going to go around this issue because I think and naturally it required in my affidavit because I deal with it and I have used the term information. There are two things here. The Public

Protector is very specific and who should be appointed to look at this and this. And secondly, we know that the Minister of Transport, and she said here, oppose this thing and said: I met with the AG at the airport with Mr Molefe. The AG – we then agreed that let us consolidate this report, this investigation under the Treasury investigation, as it were.

At that time, if you look at the amount that has been spent on investigation – actually, the amount was
 10 even less and then subsequently – so Chair, even if we wanted to do that, the – I am very clear about the appointment of Werksmans and that is why I would love Werksmans to cross-examine me because of many of the lies that Werksmans has even told, presented for their own appointment in black and white.

I think that – so I am inviting them to come and cross-examine. I will be more than happy Chair because I think we will have a great day with their teams.

ADV VAS SONI SC: Okay. Let us leave because we know
 20 that Werksmans issue... [Speaker is unclear.] As the Chairperson has said already, evidence has been led on that and obviously you want to lead evidence. Can we leave that aside for today?

MR MONTANA: Today, ja.

ADV VAS SONI SC: And deal with it whenever. Well,

certainly now. Not for today.

MR MONTANA: Thank you.

ADV VAS SONI SC: Okay. And then he points out that there were difficulties but let us just leave out all the issues raised in paragraph 32 about the appointment of Werksmans. And I will make a note that this is still to be dealt with. And you will get a full opportunity to present everything you want.

MR MONTANA: Can I highlight on paragraph 31?

10 **ADV VAS SONI SC**: Yes, yes.

MR MONTANA: Chair, the statement that has been made – and this is important because at a later stage I want to deal with this matter about the Public Protector. Mr Molefe says the investigations into PRASA, particularly the CEO, Mr Montana, I am hoping that the Commission will lead evidence on that because you will see that ...[intervenes]

CHAIRPERSON: Just hold on one second. Paragraph 31 says:

20 “Soon thereafter the Public Protector released her report on her investigation into complaints made by employees against PRASA’s management in particular the CEO, Mr Montana...”

That is what you ...[intervenes]

MR MONTANA: That is I say at a later stage we want to

deal with the Public Protector. It is actually in today's statement.

CHAIRPERSON: Yes.

MR MONTANA: Because I feel that part of the process is to present the Public Protector's report as it is about Montana.

CHAIRPERSON: H'm.

MR MONTANA: And Chair, I, in fact as a matter of fact, that report did not make any finding of corruption and
10 actually there are very few instances where I feature. She deals with employees, the irregularities in the – but not – but if you listen, you read now this report is a damning report on Montana and everything and I read this, Chair, and say – and the media repeats these lies without reading and sharing the facts of the – so Chair, I would want to take it out at the right time when I present my own affidavit, Chair.

CHAIRPERSON: Yes. No, that is fine. But it might be one of those things you would note for later.

20 **MR MONTANA:** Chair, for now so that I do not disturb the train of thought of Mr Soni.

ADV VAS SONI SC: Alright. Then at paragraphs 33 the points are to two contracts that were reviewed and set aside, the Swifambo contract and the Siyangena contract. Now again I would ask that we just leave that because I

have some specific questions based on the findings of the board. Now in the last sentence of paragraph 33 he refers to Mr Roy Moodley and then in the next section of his affidavit he deals with Mr Roy Moodley. Before we deal with what Mr Molefe says, let me ask you, did you know Mr Roy Moodley?

MR MONTANA: As CFO of PRASA?

ADV VAS SONI SC: Yes.

MR MONTANA: Yes, I did know him, Chair, I knew him.

10 **ADV VAS SONI SC:** Well?

MR MONTANA: I do not know well, Chair, I know him, he was contracted to PRASA long before so he was one of the key security risk company I think Royal Security provided services.

ADV VAS SONI SC: Okay, I am only going to deal with those matters to the extent that it involves PRASA without honing in on Mr Molefe because you have read he says that Mr Moodley tried to capture him, that is what he says but you are not here to defend Mr Moodley, and I would
20 hope not, but the only point I am making is you cannot add anything to it so I am going to confine my questions in respect of Mr Moodley who these issues, the ones at paragraph 34 and 35.

MR MONTANA: I can add, Chair. Chair, I can add. Again, you know, I was taken aback when I listed to Mr

Molefe talking about Mr Moodley. Chair, it was like this and they even agreed to go and play golf together, they told. They were like this, Chair. These same ones are grouping(?) and today I said, Chair ...[intervenes]

CHAIRPERSON: Hang on, hang on.

MR MONTANA: So I want to say, Chair ...[intervenes]

CHAIRPERSON: No, Mr Moodley, you see, the transcript will not show this. So you mean they were close, they were friends.

10 **MR MONTANA:** Chair, they were told at some stage – Mr Molefe told me that him and Mr Moodley, they are going to travel together to the US to play the golf event. I do not play golf, I have never played golf, I was a caddy for 12 years and it was at a time when players, white players in particular, would pay you based on how they played the game, that I really cannot pick up, I was a caddy and that is why I do not the way I hear my other executives they were going to play golf. I take the view of a caddy, I do not go to – so they were flying, Chair, they wanted – they
20 planned a trip whether to the UK, the US together and then I come and sit here, I hear that Mr Moodley tried to capture Mr Molefe. Very interesting. Very interesting, Chair. I can – that is the best I can say.

CHAIRPERSON: Yes, Mr Soni. Well, I think Mr Molefe did give some evidence relating to ...[intervenes]

ADV VAS SONI SC: The US Masters.

CHAIRPERSON: Yes, yes, yes, ja, okay.

ADV VAS SONI SC: He says in the second sentence, that is in the middle of paragraph 34 – remember this is their State Capture Commission or the State Capture Commission and he says:

10 “In my experience these captors are the decision-makers so that they can direct contracts and ultimately money to favour companies or individuals. As I detail immediately hereunder, the conduct of Mr Moodley is a clear example of this method of operation.”

That is Mr Molefe’s view. I am not asking you to comment, I am just introducing Mr Moodley into this context. He says at paragraph 35:

 “I did not know Mr Moodley until I was appointed to PRASA’s board.”

Are you able to dispute that?

20 **MR MONTANA:** No, no, I do not know their relationship before that.

ADV VAS SONI SC: So he says:

 “And soon thereafter I noted the name of Roy Moodley was on the lips of many at PRASA.”

Is that an impression you got as well?

MR MONTANA: No, Chair, I think it is very interesting

that – it is very interesting, Chair, that this point is made by Mr Moodley, but it is also made by Mr Fani Dingiswayo in his affidavit. So it is not coincidence, Chair.

ADV VAS SONI SC: And Ms Ngoyi ...[intervenes]3

CHAIRPERSON: You meant Mr Molefe, you said Moodley.

MR MONTANA: No, no, Mr Molefe and Mr Fani Dingiswayo. They both make this point, Chair.

CHAIRPERSON: Yes, no, no, no, I understand what you say but inadvertently you said it is funny that this point is
10 made by Mr Moodley and Mr Fani Dingiswayo.

MR MONTANA: No, no, Chair, I was meant to say Mr Molefe and I apologise.

CHAIRPERSON: Ja, that is what I mean, ja.

MR MONTANA: I was meant to say Mr – and, Chair, the point – I know that [indistinct] here, I do not want to respond to it, Chair.

CHAIRPERSON: Ja.

MR MONTANA: But both in my affidavit and in my statement today – you see, the proper names of state
20 capture, if you look at what he says, you look at the testimony of Minister Pravin Gordhan in October 2018, he makes similar points. So this is an ideology, it is not an objective thing. Mr Moodley, who did he influence because Mr Moodley was appointed I think in Railways in around 1991 when I check the history of that company. So who did

he use money to pay to appoint him? Because he was appointed – I was not ever probably born, I was not at PRASA. There was no PRASA at that time. MetroRail was not even known by its name, it was still part of Transnet. So I think he must come and explain.

So, if you make that point, make it more concrete to say we think Moodley paid Montana or paid to get this contract but you also have told us that before Montana was born Moodley was at PRASA at Transnet or Railways in 10 1991, not – I only joined PRASA in 2006, the South African Rail Commuter Corporation in 2006. Moodley was already having a contract for over 10 years, Chair.

CHAIRPERSON: Mr Soni?

ADV VAS SONI SC: As you please, Chairperson. Then he says:

“Some employees described Mr Moodley as the owner of PRASA.”

Are you aware of that?

MR MONTANA: I may – if, as a CEO, I do not know that 20 but the chairman, non-executive chairman, Chair, knows that employees at PRASA – I mean, how do you measure that? Which employees, in which depot, in which station said that?

ADV VAS SONI SC: So your answer is you do not know.

MR MONTANA: Well, I do not know but I am asking

myself, it raises different questions that is here is a chairman who goes around getting to stations, asking employees and where did they challenge(?) this think, Chair? Is this evidence, is it state capture where we are told rumours and hearsay because that is what he is saying here. Which employees? I think, Chair, what the Commission should do, should ask Mr Molefe to provide details and we get those employees to come and testify here or else it is hearsay, Chair, I cannot recall to hearsay.

10 **ADV VAS SONI SC:** Mr Montana, I just want to point out in law it is not whether Mr Moodley was the owner, it is where the people described him and told Mr Molefe. That is in issue [indistinct – dropping voice]. So when you say it is hearsay, of course it is, but it does not mean it is inadmissible in law. I am just making that point so that you understand the context in which Mr Molefe's evidence on this issue is [indistinct – dropping voice]

MR MONTANA: But, Mr Soni, does it not surprise you that me, Lucky Montana, who was then the Group CEO of
20 PRASA does not know about this issue. It is someone who is fulltime and then someone who is supposed to come there once in three months, he interacts with these employees, he knows it. I mean, I just find it odd, I find it very strange.

ADV VAS SONI SC: Yes, okay. So ...[intervenes]

MR MONTANA: So I am not saying it is false.

ADV VAS SONI SC: Yes.

MR MONTANA: But I am saying I find it very odd, as a non-executive chairman.

ADV VAS SONI SC: Okay.

CHAIRPERSON: And you were not aware of such.

MR MONTANA: I was not aware of that, Chair.

ADV VAS SONI SC: And that is why each time I kept asking you are you aware, and that is all that... Says:

10 "I was told that he had several companies which provided services to PRASA ranging from security in the form of Royal Security to advertising through a firm called Strawberry Walks."

Are you aware of that?

MR MONTANA: Of Strawberry Works?

ADV VAS SONI SC: Yes.

MR MONTANA: I am aware of them, Chair.

ADV VAS SONI SC: And Royal Security?

20 **MR MONTANA:** Royal Security, Chair, I am saying is being doing work in Railways since 1991.

ADV VAS SONI SC: But, I mean, you are aware that Mr Moodley is associated with them.

MR MONTANA: He is an associate?

ADV VAS SONI SC: No, I say he is associated with that company.

CHAIRPERSON: He was associated with it.

MR MONTANA: With Royal – no, no, no, Chair, I know that, I am well-aware of that.

ADV VAS SONI SC:

10 “I would go so far as to say that if one did not know
Mr Moodley one would easily mistake him for an
executive manager of PRASA. I was told that he
would often walk around with managers in their
work environment almost as if he were the PRASA
manager.”

You are not aware of that?

MR MONTANA: Mr Soni, do you believe this statement?
And let us look at this – Chair, let us look at this
statement.

ADV VAS SONI SC: No, no, I am asking a different
question. So [inaudible – speaking simultaneously]

MR MONTANA: But I am – I can – Chair, I am not aware
but I can see that is a very false statement.

ADV VAS SONI SC: Yes, okay.

20 **MR MONTANA:** You say that maybe a contractor may
have unfair advantage but to say that going as far as
walking in the workplace is like him serve as a manager. I
think, Chair, is – is this the PRASA I know? I do not think
we are talking about the same organisation here.

ADV VAS SONI SC: Okay. Then he says at paragraph 37:

“Shortly after my appointment Mr Moodley, who appeared to know of my love for golf invited me to a golf day he had arranged and that would be attended by Mr Montana. Did you attend any half days organised by Mr Moodley?”

MR MONTANA: No, no, Chair, not at all. I do not play golf, I do not go to those events. I have never been – the last time I was at the golf course was when I was a caddy at the Irene Country Club in Pretoria. I used to get into a
10 train at Eerste Fabriek and Mamelodi and then travel back, Chair. So this thing about golfs, Roy Moodley, they have got nothing to do with me, Chair, it is their discussion and I think the two of them must come and tell the Chair how did they meet, which golf, who was paying for those things. They have got nothing to do with me, I was never involved in any golf activity with Mr Moodley.

ADV VAS SONI SC: Okay. May I ask you then to look at paragraph 33 where he says that Mr Moodley invited him to the Durban July, I think it was in 2015.

20 “There was an attempt to persuade me to attend. Mr Moodley told me that then President Zuma and Minister Jeff Radebe and other ministers had accepted the invitation and were his guests at the event every year.”

Are you aware of that?

MR MONTANA: No, not at all.

ADV VAS SONI SC: Have you ever attended any July event that Mr Moodley hosted?

MR MONTANA: No, no, Chair, I have attended the 1 July. I was invited by Vodacom and I also had a suite there.

ADV VAS SONI SC: But never by Mr Moodley?

MR MONTANA: No, no, no, it has got nothing to do with Mr Moodley, this was a – probably I did not know Mr Moodley at that time.

10 **ADV VAS SONI SC:** Okay. Mr Montana, to take the process forward, in the rest of this section of the affidavit until paragraph 45 Mr Montana (sic) effectively says that Mr Moodley wanted to pay for his trip to a golf tournament called the Masters in Augusta in the United States. I am just placing on record that he does make the point that Mr Moodley wanted to go – he did not want to go with Mr Moodley and then Mr Moodley dropped off and he went off on his own. I am just placing that on record so that we know the issue you have raised here.

20 **MR MONTANA:** No, Chair, I know that, I do not know the details but Mr Molefe did tell me about the fact that they are talking about the US, who paid, who was going, I was never party to it, Chair.

ADV VAS SONI SC: Okay.

MR MONTANA: And let us look at paragraph 46 now, this

is now we have finished with that section on Mr Moodley because it does not – it is not a matter on which it would be fair to ask you to comment. So paragraph 46 he says:

“After being appointed, the new board was serious about discharging its fiduciary duties. The Public Protector in her report Derailed had exposed irregularities and malfeasance at PRASA and the board was determined to hold management accountable.”

10 Now that is his view, I am just setting it out here. He says:

“In my view it is this determination that led to a strained relationship between the board and Mr Montana and an inevitable fallout.”

Now is that an impression you will share?

MR MONTANA: Chair, I do not know, it is his view, but it is factually incorrect, I mean the Public Protector report was released, Chair, in August, I had already left PRASA in August 2015 so how can a report that was released after I have left be the basis of a fallout? It is so illogical.

20 **ADV VAS SONI SC:** Yes.

MR MONTANA: So on a factual – so whatever view he has that he was there to hold people – but then tell us about other things, not the report of the Public – because it was written in August, I left in July.

ADV VAS SONI SC: Yes.

MR MONTANA: And this investigation was ongoing before Mr Molefe became a Chairman of PRASA.

ADV VAS SONI SC: Okay. I will just [indistinct] you again for the purposes of understanding what the difference between you and Mr Molefe is. Mr Molefe says the fallout between you and him occurred because he tried to hold management – he and his board tried to hold management accountable. You are saying no, it was because he had a predetermined agenda, if I can put it
10 [indistinct – dropping voice]

MR MONTANA: Chair, holding management accountable, does not require someone special for that. The management ...[intervenes]

ADV VAS SONI SC: No, no, Mr Montana, I am sorry, I am asking you a different – so my question is this, he says you – the fallout was because he tried to hold you accountable, you give a different reason. Is that a fair assessment of your difference?

MR MONTANA: No, Chair, no. Issue of the accountability
20 does not feature. Early in the morning Mr Soni asked a question about this issue of reports, me holding information. I dealt with the issue of accountability. As a CEO, I am accountable to the board, it appoints me, I am accountable to the board. It does not require a special person because that is what Mr Molefe is trying to – our

disagreement, Chair, had to do with other issues that I have listed and I think we can evaluate the information, like in this paragraph, Chair, you can see that Mr Molefe in trying to retrofit and give the thing, he actually may give you – he exposes a thing that the report of the Public Protector – it was released after I have left, so how did he know that this report that – I have left PRASA, I was not at PRASA when this report was released in August. So factually, Chair, you can see that – he said I made a
 10 mistake or he just does not know what he is talking about.

ADV VAS SONI SC: Let me tell you what – and please listen to the question, it will make it much easier, Mr Montana. You have a given a reason for the fallout. Now Mr Molefe is giving a different reason. I am just saying that is it fair to say that that is one of the areas of differences between you and Mr Molefe, what caused the fallout. We know there as a fallout.

MR MONTANA: Chair, I have articulated this thing I think today.

20 **CHAIRPERSON:** Yes, I think you have different reasons. You have given your reasons.

MR MONTANA: Yes.

CHAIRPERSON: I think.

MR MONTANA: Yes.

CHAIRPERSON: Mr Molefe says it is because you did not

want to be held accountable and you say that is not true.

MR MONTANA: Chair, I am saying it is not true, but I am saying the Commission will of course look at the ...[intervenes]

CHAIRPERSON: A picture ...[intervenes]

MR MONTANA: At the sequence of events and the facts and all of those things.

CHAIRPERSON: Ja.

MR MONTANA: Including what is I am saying factually
10 incorrect that Chairman is projecting himself as a champion of accountability and then even brings a report that came after I have left. So, Chair, you may chase Montana but...

CHAIRPERSON: Yes.

MR MONTANA: Really, after I have even left PRASA there is a report that continues to cause a strain between me and Mr Molefe. I mean, there you can see it in black and white.

ADV VAS SONI SC: Yes.

20 **MR MONTANA:** So it tells you that this is an absolute fabrication, Chair, that Mr Molefe is busy with. And I am not – I hear the point you are making. But I am going to – you can see, there it is in the paragraph that here is a man who is trying to find reasons after the fact and he even forgot that this Public Protector report was issued – and I

am very clear on this issue, okay? And I have said earlier on, Chair, that the biggest - what actually the final straw after all of those things, you asked me did the Knysna meeting, you know...

CHAIRPERSON: Was a turning point.

MR MONTANA: Was a turning point.

CHAIRPERSON: Yes, yes.

MR MONTANA: I said no, the turning point was when I instructed PRASA not to pay, to terminate the contract with
10 SA Fence and Gate and recover all the money. After SA Fence and Gate and Gates had received payments approved irregularly by Ms Ngoyi and then they paid into the foundation trust of Popo Molefe. I have asked this Commission but let us subpoena the accounts of Mr Molefe and his foundation, Chair, you are going to see – you are going to see that people who come here and accuse of corruption are in fact the most corrupt. I am just asking this Commission, go there and you will see that who is paying and you ask yourself, Chairman, come back here
20 and explain to us how is it possible that companies contracted to PRASA are paying into your foundation? And most of in my evidence – in my affidavit, Chair, you know what happens after they paid? The value of the contracts goes up. So the more you pay – it is a very systematic scheme that Mr Molefe ran at PRASA. It is a corrupt

scheme, Chair, it is in violation – I even say in my affidavit, it is actually, if you talk about the prevention – the PRECCA Act.

If you look at the Popo Molefe Development Foundation you will find the evidence of gratification and all of – it is there in the evidence. And this Commission, I will ask, Chair, the investigators, they go and take 22 page reports written by Paul O’Sullivan and that, they do not investigate because they are chasing us but really
 10 investigations are to be undertaken. Like in this instance, the Commission – I was told the Commission will subpoena my accounts which were already close by ABSA but it cannot get where money flows, Chair.

So, Mr Soni, the reason that he is – he is trying to create as if, you know, out there in public we should believe that no, they are just disagreements between Mr Molefe and the things on matters about – no, you had a man – Chair, I am a very straight man and you have got someone who was involved in schemes and you will see it
 20 is in black and what where both Minister Dipuo Peters, Mr Willem Steenkamp with – and Popo Molefe were trying to force me to pay a company that failed to deliver on its project and that goes – so it goes and make donations and then they come back and say increase the value and when do they increase the value and when do they increase the

value of this contract? Not when I was there, I go on leave, Martha Ngoyi, when she was here, Chair, she told you about everything, but she did not tell you about her role in this particular matter and why I had to take action against her. So it is not true, Mr Soni.

ADV VAS SONI SC: No, I understand.

MR MONTANA: I want to be very firm and will become very clear because the Commission is going to right sweetheart(?) report that no, we think there was a fallout,
10 Mr Montana was going left. No. There were wrong things that were being done, Chair, and some of them I – I put my foot down and say they will never happen and SA Fence and Gates, I did not only cancel, I instructed the CEO I want us to recover the money that was paid irregularly to this company.

CHAIRPERSON: Last time, Mr Soni, when Mr Molefe was here, there was arrangement in terms of which he was to file a further affidavit dealing with certain matters.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** Has that been filed?

ADV VAS SONI SC: That has been filed, Chairperson.

CHAIRPERSON: Oh, okay.

ADV VAS SONI SC: But it did not deal with this.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Will obviously have to deal with it once Mr Montana's affidavit has [indistinct – dropping voice]

CHAIRPERSON: Yes, yes. Okay, alright.

MR MONTANA: Chair, he must deal with it. I know I do not have the authority, Chair, it is your authority.

CHAIRPERSON: Yes.

MR MONTANA: But he must deal with it.

CHAIRPERSON: Ja.

10 **MR MONTANA:** I do not know how he is going to explain companies contracted to PRASA – not only at PRASA, Chair, the recent one has been in parliament where Minister Gordhan was answering a question from the EFF, why companies contracted to Transnet, M & S, paid in excess of a million to the Foundation Trust. Here is a Chairman of a company, he told you, Chair, he was a paragon of truth, of good governance when he was sitting there, he was telling you and, Chair, you even said the country needs a man like you and I said my time is coming,
20 I want to tell DCJ about direct corrupt activities. We are – there is the insinuation Montana did this and that, there is money in his account.

CHAIRPERSON: Thank you. Yes, continue, Mr Soni.

ADV VAS SONI SC: As you please.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Now, Mr Montana, just to get this point, we know that there was a fallout. In paragraphs 47 and - what 47 really gives details, Mr Molefe details different aspects of that fallout. We need not deal with that because we know you have different views on it and for present purposes we do not need to work out whether what he says in the rest of paragraph 47 is correct or not.

MR MONTANA: No, Chair, it is absolutely – what he is saying is absolutely correct. The only thing that is
10 incorrect there, it is when he says:

“Mr Montana appeared to have sold a narrative to the media which portrayed the board.”

The issue is that I did interviews at that time, the relationship had deteriorated. I did not have views which – I think that Mr Molefe and the board, did not take – but I did not sell anything, so I know what he says, he is referring to. So it is correct, Chair, it is correct that the relationship had deteriorated and when I did the interview, I was no longer holding back, I was telling the truth that I
20 never sold a narrative that this board was bad and all of those things but he is not an anticorruption buster or does not change, it is not true, that is what he is trying to do in his affidavit, he is misleading this Commission and that view I will challenge, Chair, day and night. False.

ADV VAS SONI SC: Alright, now that we have finished

with 47 can I ask you to turn to page 15, paragraph 48?

MR MONTANA: Page 15?

ADV VAS SONI SC: Page 15, paragraph 48.

MR MONTANA: 48, okay.

ADV VAS SONI SC: So he deals now in the rest of this part with why he thinks you were able to protect your position at PRASA. I am just giving his version and asking you to respond. He says:

10 “An issue that has always intrigued me is how Mr Montana had been getting away with what he had done at PRASA such as corruption in procurement and abuse of power as found by the courts and the Public Protector. I am respectfully of the view that I consider the matter, the following provides a possible explanation.”

Let us just look at the matters that he deals with. In paragraph 49 he says:

20 “In the late 1990’s and early 2020’s Mr Montana and Mr Makhensa Mabunda worked together at the Department of Public Enterprises under Minister Radebe.”

That is correct, is it not?

MR MONTANA: That I worked under Minister Radebe, Public Enterprise?

ADV VAS SONI SC: Yes.

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: And Mr Mabunda.

MR MONTANA: He worked there, Chair, yes.

ADV VAS SONI SC: Yes.

“Mr Montana was the director in the office and worked directly with Minister Radebe. Mr Mabunda was appointed as a director in one of the divisions reporting to the Department of Public Enterprises.”

Is that correct?

10 **MR MONTANA:** Let us say you are reading a ...[intervenes]

ADV VAS SONI SC: I am reading paragraph 49.

MR MONTANA: 49?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, 49, the last sentence. Well, there are only two sentences in the paragraph.

MR MONTANA: Chair, no, can I respond?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

20 **MR MONTANA:** Because I think that is where we have a [indistinct] but let me deal with where this thing comes from and that is why, Chair, the problem with the Commission, okay? That is why I stated in my statement, when you read Werksmans’ reports, they are saying these things. Mr Molefe brings it there as a fact in his affidavit.

Okay? That is the first issue.

ADV VAS SONI SC: No, it is an allegation, it is not fact.

MR MONTANA: Yes, it is an allegation.

MR MONTANA: Chair but there people are describing – I thought people would say Mr Mabunda and Mr Montana did these things, it was a corrupt deal and all of those things. I was working in the office of the Minister of Public Enterprises, nè, did not know Mr Mabunda from a bar of soap. The Ministry which is not the same as the
10 department, only later get appointed in the Department of Public Enterprises, it deals with issues I think about financial analysis of State Owned Enterprises and all of those things.

Now this thing that I – so this person was in the Department of Transport, sort of Public Enterprises were now closed Chair, surely ...[indistinct] Mr Montana knows someone in Durban and therefore there should be something between him and Mr Soni. I mean is that the evidence? This allegation Chair it doesn't make sense to
20 me, it seems I am being crucified for the fact that Mr Mabunda came to work in the Department of Public Enterprises when I was in the office of the Minister of Public Enterprises. I did not employ him, I did not even know him from a bar of soap, why is that an issue?

ADV VAS SONI SC: We will deal with that in a moment,

let us deal with the facts, is it correct that you worked under Minister Radebe?

MR MONTANA: Indeed Chair.

ADV VAS SONI SC: Right, and is it correct that Mr Mabunda was a director in one of the divisions reporting to the Department of Public Enterprises?

MR MONTANA: No, not in a division Chair, he was part of the Department of Public Enterprises.

ADV VAS SONI SC: Okay so factually that is correct, you
10 are saying don't read into those two independent facts a relationship between me and Mr Mabunda, is that your point?

MR MONTANA: It doesn't make sense to me Chair.

CHAIRPERSON: I think the answer is that is your point, because I think what you are saying is – I think you used at some stage the word manipulation, you know ...[intervenes]

MR MONTANA: Yes.

CHAIRPERSON: You said what is happening here is facts
20 which have – which don't create a relationship are put together as if there was a relationship between yourself and Mabunda at that time?

MR MONTANA: No Chair there was none.

CHAIRPERSON: And you say at that time you didn't know him, you were working in the office of the Minister, he

...[intervenes]

MR MONTANA: He was appointed to the Department.

CHAIRPERSON: He was appointed to the Department but you say you did not know him at that time?

MR MONTANA: Yes, yes.

ADV VAS SONI SC: Then he says at paragraph 50:

“After the 2004 elections Minister Radebe was appointed to the Department of Transport.”

That is correct isn't it?

10 **MR MONTANA**: Sorry, ...[intervenes]

CHAIRPERSON: Was appointed to the Department of Transport?

MR MONTANA: That is correct Chair.

CHAIRPERSON: That is correct ja.

ADV VAS SONI SC: Yes, okay.

“Mr Montana soon followed him to the Department of Transport where he took up the position of Deputy Director General for Public Transport.”

Is that correct?

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

ADV VAS SONI SC: And then he says:

“The Department of Transport later launched the multi ... [and he corrected himself] Billion Rand taxi recapitalisation programme during the tenure of Mr Radebe.”

Is that correct?

MR MONTANA: Yes sir, that is correct, it was not launched by Minister Radebe, it was – the paragraph there, the game, the manipulation of facts Mr Montana soon followed him, Chair I didn't follow, I applied for a position advertised, interviewed by cabinet ministers and my appointment as Deputy Director General was a cabinet decision, that is the first thing that we must – so this thing that I followed Mr Radebe, was doing – done favours and
10 that, it is something that must – Molefe had said that no it is because of his relationship, I applied so Minister Radebe manipulated other cabinet ministers to say no appoint my boy here.

You know it is things like this Chair, and the second Chair the taxi recap programme we recall it was launched during the time of the Late Minister, Minister Daloma.

ADV VAS SONI SC: Can I just raise something with you Mr Montana, it is important. You keep saying what the Commission, the Commission, so let me tell what our role
20 is. Our role is we get allegations by members of the public by ...[indistinct], we put those allegations down, we put it to implicated persons. Now we don't put this as a fact, this is not a Commission of Finding, this is an allegation made very much like in a court of law.

Now you have a different set of facts, put them on

the table but don't make accusations about why these are being put over there. Let's just get to the facts, whether Mr Molefe did it deliberately or not we need to understand what it is. So all you want to say in regard to this, and I hope it is going to be the rest of your testimony as well, to say look it is correct that I was appointed Deputy Director, but I didn't follow Mr Radebe, I applied for a job and it was a cabinet decision. It just removes all the unnecessary aspects so we can deal with the facts.

10 **MR MONTANA:** Chair can I beg to differ. I know Mr ...[intervenes]

CHAIRPERSON: Ja, I think I understand what you are thinking, you want to make sure a certain perspective is ...[intervenes]

MR MONTANA: No, no Chair.

CHAIRPERSON: H'm?

MR MONTANA: Chair can I raise you on this one?

CHAIRPERSON: Ja.

MR MONTANA: Because I think – I think that Mr Soni –
20 Mr Soni is making a statement that I am not agreeing with Chair, not because I have got a different view, or a different perspective. Let me – I just want to give it two instances which I am going to deal with I think later in the day, but let me just address the first point.

You know my accusations Chair against the

Commission are not accusations, I am not making accusations, I have raised specific issues which the Commission has actually conducted itself in a manner that I said violate the very terms of this Commission.

Mr Soni this Commission, and I know that when I say this Commission we include the Chair, the investigators, the legal team and everybody, and it becomes unfair because if you've got Ms Rangakata which was not involved but she is an employee of the
 10 Commission, she is part of the Commission, Chair this Commission has been very selective in their application, okay. I will tell you that when I was accused, when the accusation or the allegation about my properties I was here. Mr Soni and the Chair making certain type of statements, but not only that Chair. You invited everyone who accused me, there was someone who actually put an affidavit that says I am a businessman, I have done a property deal with Mr Montana, I don't work for government, I have got nothing to do with PRASA. What
 20 did this Commission do, they kept him aside not to come here Chair, to hear a different view.

The affidavit that has been served on me, Mr Andre Wagner. Okay, so that is the Commission having Chair no this one we want, this one we do not want. Okay Chair, I have mentioned the other instances of this.

Let me give you another example Chair, Mr – you asked Ms Singole the Chair was there, about Siyangena, but I am told that you are going back to it, let me use a different one of the Public Protector. You know Mr Soni must – should look at his comments in respect of the matter of the Public Protector. Chair not a witness out there, this Commission, the Evidence Leader, was telling the Chair that one, there is only report of the Public Protector, and Mr Montana didn't challenge this particular
10 report, and Chair I don't know if – I don't even know that you know that the report of the Public Protector only address about 60% of the issues what you call derailed. The other issues were addressed by Advocate Ncubani. When you put the two reports, you have got this extreme report that I was taking on review, it is only 50%, there is another report by Advocate Ncubani, and I was sitting there hoping that the Evidence Leader would then say to the Chair, Chair we have got this report and we have got this report, and we still have to ascertain whether Mr – no
20 there were time to say that to drive the – not anybody, the Commission itself, the Evidence Leader, to say this damning report because you are trying to create a particular – so I have got instances Chair where this Commission has selected information that it puts as evidence and kept others outside.

The reason why in my affidavit Chair is actually not admitted. In October, 7th of October 2019 ...[intervenes]

ADV VAS SONI SC: Mr Montana I am sorry ...[intervenes]

MR MONTANA: Can I finish just, no can I finish this point.

CHAIRPERSON: Let him finish Mr Soni.

MR MONTANA: 7th October Chair 2019 after I submitted my draft the Commission wrote to me and told me that my affidavit, my evidence ...[indistinct] it is outside the terms
10 of reference of this Commission and I said I would rather not testify if the Commission is actually playing a role of hiding the truth.

So Chair with respect I think that Mr Soni ...[intervenes]

CHAIRPERSON: H'm, I ...[intervenes]

MR MONTANA: But when he makes a statement like that I will not accept it because I have seen this Commission acting actually in a manner that I would say violates its very terms.

20 Now you gave me some assurances in the morning Chair, and I accepted that, I said let us move, but when there are assertions made when I know the facts are different ...

CHAIRPERSON: H'm, you see Mr Montana I have no problem that as long as you have concerns you articulate

that because where you have concerns that need to be looked at, subject to our time constraints as the Commission, we must examine them and where they merit being looked into further they should be looked into further. If there are good reasons where or why they cannot be looked into further then you can be told this is the situation, so I am going to give, I think Mr Soni wants to say something, but I must also say that well I am told I have – I have seen more than I think 380 witnesses over
10 the past three years who has come and gone here, so I cannot remember everyone, so you mentioned a businessman whose affidavit you say was obtained I think but he was not called or something, so but Mr Soni might or might not know about that, but I – this is what I can tell you that the concerns that you have mentioned I want them to be looked at on their merits and where we don't agree with you we will say no we don't think this needs to be – you will be told, where we say no this should be looked at it, it will be looked at.

20 I told you in the morning the issue of Werksmans is now before the Commission and you had been raising this so – and we although we are nearing the end, we should have finished with oral evidence by end of March we are where we are, we are trying to wrap up, certain things might need to be looked at but each one must be

considered on its merits.

MR MONTANA: Thank you Chair.

CHAIRPERSON: Okay, alright, Mr Soni?

ADV VAS SONI SC: As you please Chair. Mr Montana let me just give you this as well, that it is always difficult when you have got person A making accusations against person B and then person B making accusations against person A, and they are like two different versions, but even within that context you can get a set of facts that are common to
10 both and that is all I was saying, so if you feel that I was suggesting something untoward I was not. I was merely saying I understand you say that I did not follow you, but what we do know is you were appointed as Deputy Director. We now know that it was a cabinet appointment. All I was saying is in response it just has to facilitate the facts so we concentrate on that and say he says this, but this is the facts, and then we move on, as to whether he tried to mislead or whatever is an entirely separate thing, but I just want us to get the facts and that is all I am trying
20 to do.

CHAIRPERSON: I think – I think let us do a ...[indistinct] because I can understand why sometimes even though you don't dispute a particular fact that is being mentioned by Mr Molefe you might want to say something about it, about what he says, because from your perspective maybe it

connects with something else, but let us try I think from Mr Soni's side he is trying to make sure that as we move on he is clear which allegations of fact are accepted, which are not accepted, but I think let us just try with a little bit – with some flexibility and see how it goes.

So you – we will see as we go along, let us try and accommodate each other, I think we will be fine.

MR MONTANA: Chair I accept your guidance, I would live with that, I am saying – you see for me Chair I don't worry
10 what Mr Molefe, Ms Ngoyi say about me, but when the Commission says certain things or deliberately omits certain evidence then I take exception, but sir you have given guidance, let us take that and move forward ja.

CHAIRPERSON: No, no that is fine. We are at four o'clock, we normally take a ten minutes break at four but we also talk about the way forward so that we are all on the same page about how far we go into the evening. We have been going into the evening for quite some time, evenings for quite some time to try and finalise.

20 I am happy that we go on even up to seven, maybe beyond, what is your situation Mr Montana?

MR MONTANA: No, no Chair I am here Chair, I will only ask that perhaps we – request that we take a comfort break now, but I will be guided by you Chair.

CHAIRPERSON: Yes, okay, alright. Mr Soni how is your

situation?

ADV VAS SONI SC: Yes, no, no, I am fine.

CHAIRPERSON: Okay, I hope the staff and the technicians they always understand and they accommodate me, but if there is a problem they will let me know. Thank you very much.

I think we have been doing quite well, we might not have been as fast as we would have liked but I think it is fine.

10 Okay, let us take a ten minute adjournment, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue. Will the technicians switch this one off please? It distracts this particular screen. It distracts my attention. Yes, okay. But we can continue in the meantime.

ADV VAS SONI SC: Yes, as you please Chairperson. Mr
20 Montana, so let us just finish with paragraph 50. On the facts you do not have a problem, you just are unhappy about the fact that it made it sound as if you were simply following minister Radebe when in fact it was a government appointment. Would that be correct?

MR MONTANA: Chair, I am saying it was a government

appointment number one, and number two I am saying you can see that this entire paragraph is riddled with insinuations but some of the facts are correct. I do not want to debate that.

ADV VAS SONI SC: And please, I skinned this invitation and reiterate what the Chairperson said. Where ever that is so, let us just clear that up and then but we know what the facts are. Now I need to say this to you because you have probably read the affidavit or the further affidavit.

10 You know that once the issues is that Mr Mabunda's firm, Siyaya, the S group received preferential treatment at PRASA. So that is the basis on which this factually, the factual matrix that we are dealing with is important. Now we know that the taxi recapitalisation program was headed by yourself.

Then Mr Radebe says:

“Mr Mabunda left the Department of Transport to pursue ...”

CHAIRPERSON: Mr Molefe says.

20 **ADV VAS SONI SC:** Sorry.

CHAIRPERSON: You said Mr Radebe.

ADV VAS SONI SC: “Mr Molefe says Mr Mabunda left the Department of Transport to pursue private business interest and received one of the ...”

Well firstly, is that correct that Mr Mabunda left the

Department of Transport to pursue private business interest?

MR MONTANA: Chair, I think Mr Mabunda was never at the Department of Transport. I think probably there was an error there. I will say the Department of Public Enterprise.

ADV VAS SONI SC: Oh, I see. So you are saying he left the Department of Public Enterprise?

MR MONTANA: Ja, it cannot be transport. He never ...[intervenes]

10 **CHAIRPERSON:** Earlier ...[intervenes]

MR MONTANA: Ja.

CHAIRPERSON: Earlier Mr Molefe said he was, he joined, Mr Mabunda joined the Department of Public Enterprises when you were in the office of the Minister.

MR MONTANA: Minister, indeed so.

CHAIRPERSON: Of public enterprises.

MR MONTANA: Indeed.

CHAIRPERSON: So, okay I think you are right,

ADV VAS SONI SC: Okay. So we now know that Mr
20 Mabunda was never in the Department of Transport.

MR MONTANA: That is correct.

ADV VAS SONI SC: And his, Mr Molefe says he received one of the tenders for the taxi recapitalisation program. Is that correct?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: Can I just ask you on that, did you know Mr Mabunda? I am talking around the time that he received the taxi ...[intervenes]

MR MONTANA: Chair, I have now I knew him from the Department of Public Enterprises. So by the time I was at transport, I had already met him. I knew him from there.

ADV VAS SONI SC: How close were you and he at the Department of Public Enterprise?

MR MONTANA: No, we were never close Chair. We were
10 employees. Of course the nature of the Department of Public Enterprises was at that time, I do not know today, a very small department. So the ministry and the department were almost operating from same floors.

So it was very small, because it was actually an office before it became a department. So we knew each other Chair, but we were not what you call friends, no.

ADV VAS SONI SC: Then at paragraph 51 Mr Molefe says:

“A few months later Mr Radebe appoint ...”

Sorry, the one I forgot is that you resigned from the
20 Department of Transport in 2006. Is that correct?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: Alright.

CHAIRPERSON: That must be the Department of Public Enterprises or not?

MR MONTANA: No, no. For me it is the Department of

Transport Chair.

CHAIRPERSON: Oh, because you have moved?

MR MONTANA: Ja, I had moved to the Department of Transport.

CHAIRPERSON: Ja.

MR MONTANA: The Department of Transport. Chair, can I just ...[intervenes]

ADV VAS SONI SC: Yes.

MR MONTANA: Just a factual issue. Where it says that
10 he left. We corrected that, that Mr Mabunda left the Department of Public Enterprises to pursue private business interest, and then but as far as I know, he actually went to join the provincial Department of Economic Development under Minister Tjabane in Limpopo before he went to private business.

CHAIRPERSON: Oh.

ADV VAS SONI SC: Okay, no sure.

MR MONTANA: Ja.

ADV VAS SONI SC: Right. If we said later that that
20 should I mean the, I understand you were trying to show that there is no link between the leaving and the private ...[intervenes]

MR MONTANA: Interest ja, no I think that should have happened at a later stage.

ADV VAS SONI SC: Yes. Then at paragraph 51, Mr

Molefe says:

“A few months later Minister Radebe appointed Mr Montana as CEO of the South African Rail Commuter Corporation.”

Is that correct?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: How much, how long after you left the Department of Transport?

MR MONTANA: Chair, I actually never left. As deputy
10 director general I was responsible for a number of functions, RE busses and taxis. When I was doing the taxi recap, I of course I had attacks on me. With my house being attacked by some taxi war lords or whatever, and of course the state hesitated to provide security for me.

I then resigned. Of course I was overseeing the very process of the consolidation of passenger rail entities and I was serving on the board of the SRCC as well, being DDG. So I left Chair. I then resigned and I said I am resigning with immediate effect.

20 So I then sent, actually I did not even sent a letter. I think I sent an SMS to say my house was attacked by guys with AK47's and everything. I am no longer coming because the minister had instructed that I be protected but that protection is not forthcoming.

So I am leaving. It was during his budget vote of

transport. I did not even go to Cape Town. I just decided that, but a few ... a month later Chair, the minister said to me but we have not accepted your resignation. You are a member of the board.

Of SRCC and the board had asked that whilst they are busy searching for a CEO, you come and help us for a period of 18 months. So they asked me to do three things in three months. Complete the consolidation of rail, of rail entities.

10 That is why we form PRASA Chair. Prepare for the 2010 FIFA World Cup and to save Metro Rail from collapse. That is what I was asked to do. They say instead of you leaving, help the board with this task, but of course later I became, it was then taken to cabinet that I stayed there and I stayed there for another seven years.

So I spent nine and a half years in the rail spacing. So I never left, actually despite the fact that I have resigned because of the violence that was happening at that time.

20 **CHAIRPERSON:** But were you paid for the month that you were not working, thinking you had resigned and then they told you, and they did not accept your resignation?

MR MONTANA: Chair, I think ... I am not sure, but I need to check especially considering the tax implications of your question Chair. Chair, I think ...[intervenes]

CHAIRPERSON: You want to exercise your right to remain silent?

MR MONTANA: Indeed Chair, on this particular one Chair. I did not declare it upfront. Chair, I cannot recall exactly the details, but I had resigned, but I ended up not leaving because of the situation and then I was tasked.

CHAIRPERSON: Ja, well I was just raising it. You know one can look at it at different levels, you say you resigned but you did not leave. I understood you to be in effect
10 saying after you sent that SMS of resignation you actually did not go to work?

MR MONTANA: I did not go to work for ...[intervenes]

CHAIRPERSON: For a month or so.

MR MONTANA: Well, I do not think that it was a full month Chair.

CHAIRPERSON: Ja, more or less.

MR MONTANA: For about two, three weeks and I was told that we have never accepted your resignation.

CHAIRPERSON: Ja.

20 **MR MONTANA:** We think you must, you serve on the board, so go and help the board on this task.

CHAIRPERSON: Ja.

MR MONTANA: Ja.

CHAIRPERSON: Okay, well so maybe there was no resignation but they applied the principle of no work, no

pay.

MR MONTANA: Chair, even in that one I will be forced to pay back if I was paid, so I am very careful now, to agree with that response.

CHAIRPERSON: Ja, okay, alright. Mr Soni?

ADV VAS SONI SC: May I just ask you, who was your predecessor at the SARC?

MR MONTANA: It was Mr Eddie Lekota, but at that time Chair he had left and we had a lady called, acting in the
10 position called Ms Nellie Thlaba.

ADV VAS SONI SC: The reason I am asking is you might, you seem to have followed this when the speakers was here. One of the questions was that the Chairperson, I mean the CEO of PRASA has to be approved by cabinet. Were you approved during the period when you were first appointed to PRASA or was it Minister Radebe's decision?

MR MONTANA: No Chair, it was a cabinet decision, because I acted and in October 2007, then cabinet approved my appointment.

20 **ADV VAS SONI SC:** So your first appointment was an acting ...[intervenes]

MR MONTANA: It was an elected position, ja.

CHAIRPERSON: Just remember not to speak too far away from the mic.

ADV VAS SONI SC: As you please, sorry Chair.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: Then Mr Molefe says Mr Mabunda appears to have emerged as a service provider who was awarded contracts in around 2010 providing signal services and advice to PRASA. Is that correct?

MR MONTANA: No, that is correct Chair.

ADV VAS SONI SC: And then in the next sentence he says:

10 “Mr Mabunda became a key role player in the
multi-billion rand PRASA signalling program,
being appointed transaction advisor with Ms
Brenda Marongeti through Siyaya Engineering
Consultants.”

MR MONTANA: Yes Chair, I think this matter is in the public protector report as well, where the Mr Mabunda or him working with a German company called the German Rail Operators, Ditshabana, had tendered and won the tender and there was a complaint that they got the tender improperly and one of the things, positive things about the
20 rail, it actually dismissed that part of the thing, saying that allegation is not substantiated.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Well, I wanted to say Mr Soni read that sentence of page 51. You said that is true, but I wanted to check whether the part also that says appears to have

emerged as a service provider. You say it is also true or are you just talking about the fact that later he was awarded contracts in 2010?

MR MONTANA: Yes Chair, the first one as I say was a signalling. There was a transaction advisor for signalling.

CHAIRPERSON: Yes.

MR MONTANA: And let me explain, I do not know Chair if you will allow me to because we are going to deal with these things.

10 **CHAIRPERSON:** Ja.

MR MONTANA: But our relationship with Mr Mabunda ...[intervenes]

CHAIRPERSON: Okay, ja no that is fine. You made ...[intervenes]

MR MONTANA: Because I think it is helpful for the commission and the questions that will come.

CHAIRPERSON: Ja.

MR MONTANA: Chair, the ... they tendered. They won this thing. We took a decision which was done by myself
20 and the board at that time the Chair of the committee of the board on this was Ms Bridgette Gasa. We decided to say we have interacted with all these companies all over the world.

CHAIRPERSON: Which committee of the board was ...[intervenes]

MR MONTANA: That is the ...[intervenes]

CHAIRPERSON: The tender ...[intervenes]

MR MONTANA: No, the finance capital investment and procurement.

CHAIRPERSON: Okay.

MR MONTANA: Committee. That what we need to do, we need to approach the Germans. There was a letter that Siyaya had written to the then Minister of Transport, Minister Sibunda Bele at that time. The letter was then
10 forwarded to us at PRASA.

Where the Germans indicated to us what they have and that they have partnered with this company. So I say no, that is good, but we want to see the Germans. I travelled with Ms Gasa from the board. We went then to see, we then took certain decisions in our discussions with the group.

We say look, we are commencing with and I will explain at the end why I am explaining this to the commission. We said PRASA is implementing a very
20 complex modernisation program, yet it does not have the skills to do so.

Can we sign an agreement, and we signed a memorandum of agreement with the German. On signalling of course they won a tender, so it was not an issue, but where you see them, and I think the other tenders you ask

about Chair, is in respect of the what is it called?

Of the depot modernisation program. Where we are preparing for new trains. The German support to us was invaluable Chair. They help us with all the designs. In PRASA, when we started PRASA, there were not even drawings, technical drawings for most of these facilities.

[indistinct] Siyaba DB, had actually put a tender for the Braamfontein, after we signed an agreement they have also put the bid for the Braamfontein facility. The
10 Braamfontein depot.

ADV VAS SONI SC: Modernisation.

MR MONTANA: Which it is modernisation, which we discussed earlier on. Now Chair, the CEO of PRASA technically comes and briefs me about the tenders that they were running. I said but we have got a problem, because what you are giving us is not a railway solution, it is a construction.

A depot looks, it looks like it is outside the railway, but it is an integral part of railway operations, including
20 safety and operations. So it tells us that in South Africa, after we have done this bid, we actually do not have that company, the companies that understand that.

That instead of appointing GB to build Braamfontein, are you also going to appoint them to build Durban, Salt River and Cape Town as well as Wolmerton in

Pretoria? We have got a memorandum with them. Let us agree that they then provide us with the engineers to do the drawings for us so that when you go out on tender, so the relationship Chair has to do with that.

Of course, people have tried to link it and say no, Mabunda and Montana public enterprises and all of those things. So we live in a world where we are no longer supposed to know people Chair or that should not have been employed.

10 So Siyaya DB, what has happened I said in my statement Mr Soni that six years after I have left, there is no depot that has been built, and Chair you heard the testimony of Judge Makubela here. Remember the issue had to do with the payment of Siyaya and that dispute.

 The reality of the matter Chair, because of what we are doing to ourselves as a country, we have a situation where PRASA and Siyaya are in dispute, that all the drawings, the technical drawings and the plans, are sitting with people and they say okay, we have done this work, we
20 have not been paid.

 We are keeping these things, because you do not appreciate the work. The essence of that is that PRASA today is actually left with the situation because you say everything is irregular, everything is corrupt. So here is a young organisation.

It cannot implement anything today Chair, because for I think the dispute that this commission was discussing was about 80 million, 80 86 million. Yet we cannot rule out infrastructure worth billions, precisely because the technical, and that is the reason why we needed that partnership with the Germans.

There is collapse, PRASA will not be able to implement anything Chair, unless if they knew its board and management, it does not have to be with Siyaya. They
 10 need to appoint a strategic partner that would assist them in doing that technical work, even before they go out on tender.

Because if you go out on tender, you do not have this detailed work. you do not have the bill of quantities, you do not have the technical drawings. You then have a lot of variations, because you cannot even control the cost in this process Chair.

CHAIRPERSON: Yes, okay. So you, the point you are making is that is how you got to know Mr Mabunda more?

20 **MR MONTANA:** No, no Chair. I am saying when he was employed at public enterprises ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: I came to know him.

CHAIRPERSON: Yes.

MR MONTANA: And he left, he disappeared.

CHAIRPERSON: Yes.

MR MONTANA: And I think that is when he was working in Limpopo for Minister Tjabane.

CHAIRPERSON: Ja.

MR MONTANA: And then he came back. Of course he was part of, it was not his company but another company he was part of, called I cannot recall the scrapping agencies of all taxis, and then of course the tenders that were processed.

10 **CHAIRPERSON:** Okay. Mr Soni?

ADV VAS SONI SC: What was his skills training, was he an engineer?

MR MONTANA: No, no. He was not an engineer.

ADV VAS SONI SC: So, and his position at Siyaya?

MR MONTANA: Chair, I think my understanding, he is the founder of Siyaya. Which was I think that is training based on what he was doing at the Department of Transport. He was dealing with the financials of state owned enterprises. He belonged to a division called entity over sight where
20 entities reporting to the public enterprises, Eskom ... so those would be the teams that analyses the balance sheet, what level of recapital ... so I think it comes more on the finance side than on the engineering side.

But he had, Siyaya had a lot of engineers from South Africa, and they partnered with the German

company. The German railway, the PRASA or Transnet version on the German side.

ADV VAS SONI SC: And, but the company was called according to what Mr Molefe reflects, it was called Siyaya Engineering Consultancy.

MR MONTANA: No Chair, I think there are different companies. There is Siyaya Engineering, I think that they have got the Siyaya Group. I think they call it S Group.

ADV VAS SONI SC: S Group, yes.

10 **MR MONTANA:** But they had in a relationship with PRASA they were primarily in the partnership between Siyaya DB, which was a specific partnership that they had Chair.

ADV VAS SONI SC: And his position in the company was CEO?

MR MONTANA: Chair, I do not know exactly. I cannot confirm that but I know he is a founder. He was the founder. Whether he was Chairman or President or CEO, I cannot confirm that.

ADV VAS SONI SC: Then Mr Molefe says:

20 “Such services included signalling, fuel supply and other engineering services through the PRASA technical division and then Mthimkhulu.”

Now is that correct, that the services included signalling, fuel supply and other engineering services?

MR MONTANA: Chair, yes I can confirm with signalling, I spoke about it, there was a tender and they got the tender. With fuel, Siyaya got the tender and with other engineering services and Daniel Mthimkhulu Chair, our technical division Chair was the one doing most of that work.

So I do not have each and every detail on some of the projects they were doing there.

ADV VAS SONI SC: But would Mr Mthimkhulu be the person in charge of the technical division?

10 **MR MONTANA:** No Chair. You see, that is why this thing of Mthimkhulu, the way it is written in this page, I do not know. Can I have one minute to just explain?

ADV VAS SONI SC: Yes. No, no, no please and it is going to come up as you will know in the Swifambo matter, so ...[intervenes]

MR MONTANA: In the Swifambo matter. No Chair, then I think perhaps let us leave it at that Chair. I will come back to it and deal with ...[intervenes]

CHAIRPERSON: Okay.

20 **MR MONTANA:** Ja.

CHAIRPERSON: Okay.

MR MONTANA: I will deal with it at that time, yes.

CHAIRPERSON: Okay, that is fine.

ADV VAS SONI SC: He says:

“Between 2012 and 2015 through consultancy

services and fuel, Mr Mabunda's Siyaya Group earned approximately 900 million rand from PRASA."

Is that about right?

MR MONTANA: Ja Chair, I think so.

ADV VAS SONI SC: And I am just saying this, I know a figure of a billion rand also has been given by I think Mr Dingiswayo in his affidavit.

MR MONTANA: Is that the value of contracts or the actual
10 payment?

ADV VAS SONI SC: No, it is the payments made to Siyaya, because you would see here there is, he says earned approximately 900 ...[intervenes]

MR MONTANA: Yes. I think Chair, if we sign the document, if I remember very well, because I participated in the liquidation hearing of Swifambo was called as a witness there, the amount of ...[intervenes]

ADV VAS SONI SC: Well, of Siyaya.

MR MONTANA: No, Siyaya, sorry. Of Siyaya. My
20 apologies Chair. Of Siyaya. The amount was in the order of about 850 million. So I think maybe Mr Molefe is not far, far from the point in terms of the amount.

ADV VAS SONI SC: Yes. Alright. Then he makes the point which I think you would sympathise, well not sympathise, but you would accept that he was ahead of the

struggle and he was not being ostracised. I mean I know he gives a different reason, but is that about right?

That, no.

MR MONTANA: Mr Molefe was never ostracised. He did wrong things and that is why he created many enemies as well.

ADV VAS SONI SC: Yes. But for that, was he ostracised or you say that did not happen?

MR MONTANA: No Chair, he was not ostracised. I think a
10 lot of, I think there was a lot Chair, where people realised that Mr Molefe was actually how would I say Chair? He basically led a double life for lack of a better word. On the one hand ...[intervenes]

CHAIRPERSON: But I see here Mr Montana that he says he was ostracised by his own comrades and I am wondering whether you know all his comrades and you know that they did not ostracise him.

MR MONTANA: Chair, maybe ...[intervenes]

CHAIRPERSON: You might not know. Ja, you might not
20 know.

MR MONTANA: Exactly Chair.

CHAIRPERSON: It would be different if he was saying he was ostracised at PRASA or maybe in circles that you know, that you ...[intervenes]

MR MONTANA: But he mentioned to be specific Chair, in

his testimony firstly he says parliament did nothing. He then said he briefed the AND national executive, I do not know of course about, I was not part of that briefing and thirdly Chair, he mentioned Minister [indistinct] and I think both the minister, the former minister and the deputy minister came, and actually refuted the case that he made.

So ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: So I do not think so Chair.

10 **CHAIRPERSON:** Ja, my understanding in regard to parliament and Minister Phitso, was not that he was accusing parliament or Minister Phitso of ostracising him, I think my understanding was that in regard to parliament or the relevant portfolio committee his complaint was were they interested in the fight against corruption that the board was doing, and even when he appealed to them, to intervene and do their job, they were not doing their job. I think that was, so maybe ostricization relates to outside of those institutions.

20 **MR MONTANA:** Chair, can I give you a good example, so to understand Popo Molefe?

CHAIRPERSON: Yes.

MR MONTANA: Let me put it in Phedi and I put it in, you know there are times when you say in your father's kraal you have got sheep, and then every day you come and

check your sheep, you find that one sheep is missing and you take the dogs, you go around the forest to check, there should be something eating my sheep.

You go out there Chair, you do not look here inside. Okay. [Vernacular – 00:35:00].

CHAIRPERSON: But you must remember to say that in English.

MR MONTANA: Yes Chair, let me say it in English. That when you look after your father's ...[intervenes]

10 **CHAIRPERSON:** Because I also do not understand that.

MR MONTANA: Chair, so when you look at the case of Popo Molefe, I am saying Mr Soni, it is a situation where you have got sheep at home, at your father's homestead. Every morning you wake up, there is one sheep missing and then you take the dogs and the boys, you go out.

CHAIRPERSON: Ja, no I heard that part because you said it in English.

MR MONTANA: Yes.

CHAIRPERSON: There was the other part, or was or you
20 already translated?

MR MONTANA: I am trans, yes.

CHAIRPERSON: Okay no, no, no. I think ...[intervenes]

MR MONTANA: But then one day you discover but I do not see even trail of blood, of anything dragging these sheep and then one day you pull off the wool from one of the

sheeps only to find that you have got a wolf in your father's kraal.

So he is eating the sheep Chair. Lots of people have been able to see through Mr Molefe and I think that for someone who has made such a huge contribution, I think that he needs to reflect himself. He cannot fight corruption and still have, receiving money from, through his foundations.

Those things do not go hand in hand Chair. So he
10 would be ostracised. I do not doubt about it Chair.

CHAIRPERSON: Okay, thank you. Mr Soni?

ADV VAS SONI SC: Yes, as you please Chairperson. Mr Montana, in paragraph 55 and 56 the dealings, or he indicates that he is now going to deal with the Swifambo contract which he starts off with at paragraph 57 on page 17. Are you there?

MR MONTANA: Paragraph 57?

ADV VAS SONI SC: Page, paragraph 57 yes sorry.

MR MONTANA: Ja, I am there.

20 **ADV VAS SONI SC:** Ja.

MR MONTANA: Page 17.

ADV VAS SONI SC: So I will just read to you and you tell me whether you agree with his summary. He says:

“I set out the extent of the maladministration
as found by the courts in respect of the

contract that PRASA concluded with Swifambo. The position in respect of this contract may be summarised as follows. First one, the board applied to the High Court to declare the contract invalid and set it aside on account on onerous irregularities, primarily the honest and corrupt conduct of PRASA officials.”

You have read the papers. You have read the papers because you applied to be an amicus in the High Court, is that correct?

MR MONTANA: Indeed Chair. Indeed.

ADV VAS SONI SC: Now is that a correct summary of what he says the case was about?

MR MONTANA: Chair I think in the application by PRASA signed by Mr Molefe, that is what they set out.

ADV VAS SONI SC: Yes.

MR MONTANA: And I tried Chair to apply as a friend of the Court but my application was not accepted and I think Chair it is very unfortunate. It is ...[intervenes]

20 **ADV VAS SONI SC:** Sorry, I did not hear you?

MR MONTANA: I say it was very unfortunate.

ADV VAS SONI SC: Yes.

MR MONTANA: Because having the court dealt with the matter where there were huge misrepresentation, all the facts were not placed before the courts, but we respect

judgment by all courts Chair, but the judgment in my affidavit, I go into detail about this particular judgment Chair.

ADV VAS SONI SC: Can I then say, but okay. So I mean that is more or less what PRASA, the new board of PRASA argued and alleged in the Swifambo affidavit.

MR MONTANA: Indeed Chair.

ADV VAS SONI SC: Then he says:

“Francis J set aside the contract.”

10 That is correct as well?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: And then he says:

“Swifambo appealed to the Supreme Court of Appeal which dismissed the appeal.”

That is correct, is it not?

MR MONTANA: That is correct.

ADV VAS SONI SC: And then he says:

“The Constitutional Court refused to grant Swifambo leave to appeal.”

20 That too is correct?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: Then he says:

“Both the High Courts and the SCA were highly critical of the conduct of PRASA officials, especially Mr Montana.”

Now I just want to say to you that this is what has been, oh sorry you wanted to comment?

MR MONTANA: No Chair, proceed. I want to make a comment on the two judgments and ja.

ADV VAS SONI SC: Yes. So I will tell you what the affidavit does or what has been done in the affidavit. Mr Molefe has extracted findings of manually the Supreme Court of Appeal and set them out in his affidavit.

MR MONTANA: Ja.

10 **ADV VAS SONI SC:** Virtually word for word as to what the findings are.

MR MONTANA: Yes.

ADV VAS SONI SC: And what I want to do is deal with each of those findings as made by the SCA. So can I say, and if we want to look at the judgments, they are available, but for present purposes there is no need to. You may obviously refer to any other parts of the judgment, or outside the judgments that you want.

But can I say, this is what he says at paragraph 59.

20 He says:

“It is not necessary for me to repeat what was said by those courts, except to refer this commission to some of the factors that led the High Court and the Supreme Court of Appeal to conclude that the award of the tender was

corrupt.”

Now in the High Court matter which is not referred to here, in paragraph 3 of his judgment, Justice Francis says that you had applied to be an amicus but he dismissed the application. That is in his main judgment, the one that went ...[intervenes]

MR MONTANA: No, no that is correct Chair. I agree with that, ja.

ADV VAS SONI SC: I just want to ask you one question on
10 that. He dismissed your application to be an amicus. Did you take that decision on appeal or did you apply for leave to appeal?

MR MONTANA: I applied for leave, which he also dismissed Chair.

ADV VAS SONI SC: Did you apply to the Supreme Court of Appeal for leave to appeal?

MR MONTANA: Chair, I need, I did appeal the decision but let me just, because ...[intervenes]

ADV VAS SONI SC: No, no, no I understand.

20 **MR MONTANA:** I did appeal the decision.

ADV VAS SONI SC: Yes, okay and I mean that clearly shows that you did not agree with what he said and you wanted a higher court to make the deformation.

MR MONTANA: Yes.

ADV VAS SONI SC: I am talking about the amicus

...[intervenes]

MR MONTANA: No, no, no both the two judgments Chair

...[intervenes]

ADV VAS SONI SC: Yes.

MR MONTANA: I did not agree with them, I still reject them and actually in my affidavit I deal with them.

ADV VAS SONI SC: No, sure.

MR MONTANA: But I do not know whether you want me to deal with them now.

10 **ADV VAS SONI SC**: Well, let us place on record what the Court found.

MR MONTANA: Found, ja.

ADV VAS SONI SC: And then we can ... you will have your chance and but before you do that, I will want to point out some parameters that we would have to set for that. Now in paragraph 59.1 he says that:

“At paragraph 10 ...”

Because he puts right at the end the paragraphs, at paragraph 59.1 he says:

20 “Swifambo, the Supreme Court of Appeal found that Swifambo’s bid did not comply with the requirements of the RFP in several respects that is not having a tax clearance certificate or a VAT number.”

Now that is a finding, I am just placing that on

record. You have read the judgment or can I just say that these are the, I can say to you I checked what is contained in the affidavit against what the Supreme Court judgment says.

CHAIRPERSON: I think Mr Soni, in so far as these are findings that are in the judgments ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: You can just ...[intervenes]

ADV VAS SONI SC: Read them.

10 **CHAIRPERSON:** Ja, because ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: Obviously he is not going to say those are not findings.

ADV VAS SONI SC: Yes.

CHAIRPERSON: He will deal with them when he comments on the judgment.

ADV VAS SONI SC: Yes.

CHAIRPERSON: But he will indicate I think when you have read, I think it is about what, three or four more? Three,
20 four more under that paragraph 59?

ADV VAS SONI SC: Yes.

CHAIRPERSON: And then he can indicate, he can confirm that he is aware that it, they are findings that were made in the judgment.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: So that is the first finding. The second finding is that Swifambo did not submit their BBBEE plan for goods and services it would procure for the duration of the contract. The third finding is or what, the third finding that Mr Molefe refers to is:

10 “Swifambo did not comply with the local content requirement as the locomotives were to be designed and manufactured in Spain and he did not provide evidence of previous experience in the rail industry.”

Then the next matter he refers to which is at paragraph 12 of the judgment:

 “Swifambo did not demonstrate it had experience in the supply of locomotives which capacity to manage a project of the size put out to tender.”

20 Now can I just ask you this Mr Montana, is it correct that Swifambo had been formed a few months prior to the RFP being issued, or around that period? Is that correct?

MR MONTANA: No Chair, I do not know when Swifambo was formed, the date or the period before that, but with bids of this nature, that is what happened because if a company bids, either an established company or people who form either JV's, it happens.

It is not unusual. Actually that is what happens. If you look at what Gabela is. Gabela is an [indistinct]. But it then say we want to bid, let us form a company. This is a special purpose vehicle. To bid for that project.

Okay. You then assess the capacity of that. you for example in the Gabela case you will ask for what we call parent company guarantees, to say but this is a special purpose vehicle, if we want guarantees, who is going to stand for this guarantee?

10 So Chair, it has happened. In fact, it actually shows lack of understanding of what he has been saying about this and the drama that has been created, but I will comment more on it when I give my overall comment to assist the commission to have an appreciation of what is happening here.

ADV VAS SONI SC: Alright. Then at paragraph 60 he says that at paragraph ...[intervenes]

CHAIRPERSON: Maybe ...[intervenes]

ADV VAS SONI SC: Sorry.

20 **CHAIRPERSON:** Mr Soni, I take it Mr Montana you accept that the, that 59.1 to 59.4 are findings or conclusions made in the judgment?

MR MONTANA: 59.1?

CHAIRPERSON: Ja, to 59.4.

MR MONTANA: Ja no Chair, I accept that.

CHAIRPERSON: Yes, yes ja.

MR MONTANA: I do not agree with them, but I accept it.

CHAIRPERSON: Yes, no I accept that you do not agree.

Just to know that you know that they are made.

MR MONTANA: I have read the judgment Chair, I have seen that.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then he says again in respect of what he said at paragraph 13:

10 “Despite the [indistinct] and other irregularities, PRASA’s BEC recommended that the BAC, to the BAC that the bid be awarded to Swifambo and at its meeting of the 24th of March 2012, the board approved Swifambo as the preferred bidder.”

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: Now the contract between PRASA and Swifambo was concluded on the 25th of March 2013 and the relevance of the dates I can just point out is this, that the
20 recommendation to the BAC is made on the 24th of March 2012. It is a year and a day later that the contract between PRASA and Swifambo was complete.

You accept that?

MR MONTANA: I accept that Chair.

ADV VAS SONI SC: Yes, and then it was only on the 4th of

July 2013 that a contract for the supply of locomotives was concluded between Swifambo and Vossloh. Now Vossloh as I understand it was the Spanish company that would manufacture the locomotives?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: Then at paragraph 61 Ms Molefe says:

“In its judgment ...”

And this is in respect of paragraphs 4 and 5 of the judgment:

10 “The SCA noted the role of Mr Daniel Mthimkhulu, the executive manager engineering services as follows. In July 2011 he recommended to Mr Montana that the then board, sorry and the then board that PRASA sources a 100 locomotives to replace its outdated fleet at a cost of five billion rand over a period of six years.”

Now that is the finding of the board. He says:

20 “A RFP was then published in November 2011 to purchase some 88 locomotives. The specifications of the locomotives to be supplied were drawn up by Mr Mthimkhulu.”

Then at paragraph 62 Mr Montana, I mean Mr Molefe points out:

“Of Mr Mthimkhulu the Supreme Court of

Appeal said the following. He had no experience in the subject. It had been appointed to the position in PRASA by Mr Montana in 2010 and had a meteoric rise through the ranks with a meteoric salary hike to match it. Mr Mthimkhulu claimed to have diplomas in engineering and later a doctorate. In fact, he had no qualification at all.”

That is word for word what the Supreme Court of
10 Appeal said in its judgment. At paragraph 63 Mr Molefe points out:

“The SCA then note ...”

And that is at paragraph 7:

“That the specifications drawn up by Mr Mthimkhulu contravene various requirements of PRASA’s procurement policy. They matched those of the locomotives manufactured by a Spanish company, Vossloh es Spana, SAU which in May 2011 had met recommendations
20 on PRASA’s needs.”

Then the paragraph 63 goes on:

“The SCA agreed with Francis J that Mr Mthimkhulu had tailored the specifications to include several features that were of no relevance to PRASA’s needs, so as to benefit

Vossloh and thus Swifambo. Accordingly the tender process was corrupt ...”

And that finding was made at paragraph 24. Francis J had, Mr Molefe goes on at paragraph 64:

“Francis J had found that Mr Mthimkhulu had behaved dishonestly. In the appeal before the SCA, even Swifambo did not deny this.”

This is what the SCA says in its judgment. The SCA also found that Mr Montana had been a party to Mr
10 Mthimkulo’s conduct. That finding is made at paragraph 8 of its judgment. In addition, at paragraph 30, it says:

“Like Francis J did earlier, that Swifambo was party to a fronting practice.”

Then at paragraph 65:

“In 2000 ...”

Sorry. That is the extent to which he deals Mr Molefe deals with the Swifambo judgment. Now you can accept and I think you do, that those were the findings but you want to comment on those findings. Is that correct?

20 **MR MONTANA:** Chair, listening to the reading of the findings by the Court, it gets so scary and if you do not know the facts of this matter, and that is why Chair when PRASA went, and Chair I accept that I am not here to review this matter.

I will just state the facts that, because I think the

Courts got it wrong.

CHAIRPERSON: Yes.

MR MONTANA: And Chair, I am going to say something which, and say it with a level of seriousness, because it is in my affidavit. Both Courts ...[intervenes]

CHAIRPERSON: I am sorry. Just repeat what you said?

MR MONTANA: I am saying that I am going to say something on this issue, more specifically the two judgments.

10 **CHAIRPERSON:** Ja.

MR MONTANA: Which I think that, is something that I take seriously. But if I could be allowed some time to deal with this issue and assist this commission ...[intervenes]

CHAIRPERSON: Mr Soni, you had come to a point where he can deal with, comment on the judgments.

ADV VAS SONI SC: Yes, except that Mr Montana this is a commission of inquiry. It is bound by judgments of Courts. Now you may have a criticism of the judgment, but we, I just want to point out so we are not going to go into areas
20 that are not going to be, because I will say immediately to the Chairperson, who is of course the Deputy Chief Justice, and he knows the law better than I do.

I will say to him that we are bound in terms of the constitution to accept what the Court says. You may comment on it, but I am posing that very important

guideline for two reasons. One is as a commission, we owe a duty to our courts to respect the constitution and therefore their judgment.

I just want to point this out to you. Our greatest president ever, President Mandela, when he was faced with a judgment adverse to him, he said I will comply, even if it means I will go and have to testify when all his lawyers said he should not.

Now that is the respect that the constitution
10 demands, and I am just placing that on record, so I am not going to continually interrupt you. I have that duty to the commission, to the constitution and to the country and of course to the judiciary.

CHAIRPERSON: Yes. You may comment, ja?

MR MONTANA: Indeed, indeed. Thanks very much for that. You see, you are making life difficult for me. Because all the things I am about to say Chair, I do not want it to be viewed as if I do not respect the judicial, I do not respect the Courts and all of those things.

20 Chair, when PRASA went to Court, and again I accept the fact that we are not here to review the this particular, the Court judgments and all of those things, and I take into account that these are civil matters. So the Courts also took decisions based on balance of probabilities.

Chair, when PRASA went to Court, I read the paper. The PRASA paper. I was shocked with these papers, the amount of misrepresentation and I went to Court. I said look, as a former CEO of PRASA all these findings that they, because they emerge from the, what is it called?

CHAIRPERSON: The affidavits.

MR MONTANA: The affidavit that was signed by Mr Molefe on behalf of, anonymously denying the Courts of material fact which if they were placed before the Court, I am
10 convinced Chair, that this judgment we would not have. That is the first issue Chair I want to say.

I said as a former CEO of PRASA, I think I know the ins and outs of this matter. I want to assist the Court. I do not want to support this side or that side, but some of the things, and I said if indeed some of the allegations that are being made against me are true, then I should actually have been joined as a respondent and I was not.

I think it was, I felt terrible when I was denied the opportunity to assist the Court in that matter. Chair, there
20 are certain things that are just not true, which the Court has accepted and hopefully that when they are pursued probably by other agencies, I mean the first issue about, we know that there is a general use of the word corruption in the Francis J matter, judgment.

I say Francis J when he dealt with the issue about,

and I think Mr Soni touched on it, about the issue of admissibility of hearsay under what circumstances, I look at that Chair. It was a serious error in my view, and I have consulted other people and asked, because it gave rise to this.

Secondly, the issues about Daniel Mthimkhulu, firstly Daniel Mthimkhulu was an executive manager in the PRASA rail division. But so much power has been given to this man Chair, as if he was so powerful. He reported to a
10 CEO of the rail division.

People will tell you that there was this powerful guy reporting to Montana, even had found its way through the judgment. Chair, let me just highlight three things from the Francis J judgment. The first, and I will tell you what other additional issue.

The reason for excluding me from that matter, I do not think, I have gone out to check, I am not sure that they are being sound. Some of the things that have been accepted by the Courts, could actually could have been
20 tested.

For example, it is being alleged that Mr Molefe said that PRASA at that time changes procurement strategy so that Swifambo can represent an outright purchase. Chair, we know even from the bidding process that that is factually incorrect.

In fact other companies, General Electric is another bidder that was participating in that process. He submitted an outright purchase that is there, and I put it in my affidavit so that I can assist the Court. So I was dismissed and that fact, left out.

So the Court is left with one version on which to make its decision, that only Swifambo was given, was treated fairly, what is it called? Was given the privilege to ... it is not correct Chair. The, I presented facts for
 10 example on the bid, on the briefing, compulsory briefing session.

It actually shows that all bidders, including those that did not bid, were given the opportunity to do all of those things that were there. Again, if that fact is not before the Court, the Court will work on the basis that is before it.

So I am trying to Mr Soni, to go around so that I am not seen to be attacking the judiciary, to take a more light approach to this issue. Thirdly Chair, it is not true that
 20 Daniel Mthimkhulu wrote this specification. PRASA had a committee.

Daniel Mthimkhulu was the head of executive, he was the head engineering services in our range division. So this team PRASA had engineering functions in its different divisions. On the technical side, in the rail side

as well as in its property side.

So Daniel was a Chair of this particular committee, but he did not draft the specifications. We actually had engineers who specialises in locomotives and everything involved in that process and in my affidavit I provide the names of that.

So the Court had put a lot of emphasis. Mr Molefe says in his affidavit the Court says Daniel was dishonest and, was dishonest and Swifambo did not oppose, but
10 Chair, Swifambo cannot oppose something about PRASA. The internal matters of PRASA because they know nothing about that.

So I think it is unfair in fact to expect Swifambo to talk about internal PRASA matters. Let me add Chair, two important matters. You know we are making a mistake Chair. If you cancel Swifambo, I think you must cancel Gabela.

Because we are dealing right in our, and I took the legal advice. It was written by Mazwai, Dolah Mazwai and
20 I attached it as part of the thing there. It actually says that most of the issues that are regarded as irregularities, actually PRASA did not ask for them and you can see that some of the things that Mr Molefe is talking about, were actually afterthoughts Chair.

Because at the time you would recall that even the

PPPFA was not applicable to PRASA, because PRASA and other state owned enterprises were exempt from this particular issue. When Swifambo Chair put a bid, I hear that there was no capacity.

The head of Swifambo is an engineer. Oswald Mashabo is an engineer. There were four other entities other than what is it called? Oswald Swifambo, Oswald Mashaba. Other entities which are doing work in the rail space Chair, and they have never been mentioned because
 10 it disprove the notion that you have an entity that did not have capacity.

Chair, the most important thing that South Africa had to decide on, with regard to this locomotive, PRASA I think it was buying these locomotives for its long distance, 88 locomotives. Where should it build these locomotives? Did it have the quantities to build a factory?

For example to build this locomotive. The big answer is no, PRASA could not have done that. The other company that uses locomotives, PRASA requires
 20 locomotives for 8% of its business. Transnet requires locomotives for 100% of its business.

So we can see that Transnet would buy locomotives, or even build the platform, but PRASA and Transnet are not using same locomotives. A passenger locomotive and a freight locomotive are not one and the same

thing.

So when PRASA went on tender for 88, it ended up contracting on 70. 70 locomotives cannot sustain Chair, even a factory. So we did not specify Chair, in the bid and when I say we I am referring to at the time I was at PRASA. I am referring to our procurement teams, not me personally.

They did not specify in the RFP the fact that you have to structure your relationship. The bid provide us
10 with a solution. So the company structured it themselves in many different ways and I just find it odd that you then take and punish them for the manner that we have, but what is interesting Chair, is that in this submission by Mr Molefe, he talks about the bid adjudication committee.

We have heard that the Courts talks about Montana. If there is one bid where I never even played a part, it is this bid Chair, because it was over three billion rand, over my delegation. It went to the board, to the bid evaluation committee.

20 It then went to the bid adjudication committee who was Chaired by Mr Phiro Holero who came here and never shared with this commission the fact that he was the Chair and had recommended to the board. Ms Matangoya was part of the bid adjudication committee, who was here.

So, and this adjudication committee, one of its

major issues before they recommend to the board is to advise the board why, for example to say we have picked up certain, either non-compliance or irregular issues. We think you must approve subject to the following conditions or we have disqualified these people because ... they did not do that Chair.

[indistinct] Matango and others, they recommended to the board. When the board of PRASA decided on this, none of these issues were there Chair. Now Mr Molefe
10 write about these issues, as if he only learnt about it after.

Chair, Mr Molefe in 2014 in September, travelled to Spain.

ADV VAS SONI SC: I do not want, remember we are dealing with the judgment here, dealing with Mr Molefe.

MR MONTANA: Ja, no, no it is true sir, I hear that, but I am just illustrating a point here. He said to the Court when he went to Spain and he delivered speeches on locomotives, he said certain things Chair which even contradict to what he presented.

20 So the Francis J judgment, which were I think that even from the beginning the judge defined himself that the Court has got the responsibility to fight corruption. Which I think is very important Chair, that the Court has got a duty to fight corruption where evidence suggest that.

In the Swifambo matter, I want to argue Chair and I

will still argue to, till things change. In the Swifambo matter, you may have identified those issues, but I think the Court went beyond his duties when he declared the Court, that contract to be corrupt.

Chair, and I am saying that after I have now had at the benefit of even seeing the evidence that was presented before this commission, by the liquidators of Swifambo. I think Chair, mister ... was it Sacks?

ADV VAS SONI SC: Mr Sacks was the forensic
10 investigator.

MR MONTANA: The forensic investigation, and Mr Mula I think.

ADV VAS SONI SC: Mr Mula was the ...[intervenes]

MR MONTANA: Indeed, they came and presented Chair and they gave the numbers. Those numbers, they tell us two important things Chair. That none of that money that you have seen flowing, number one has flown to PRASA people.

That is the first issue and it is very interesting that
20 in corruption because who is supposed to be paid? Is the one who award the contract, who does not exist. That is the first issue. The second thing Chair, I think you made the point to say there is this 3.5 billion rand contract, okay.

Chair, PRASA spent on only 2.6 billion rand and when you analyse the numbers Chair, out of those numbers

1.9 billion are used. I use approximate numbers. Approximately 1.9 billion of that amount went to buy the transition components and everything. 300 million went on tax.

Another 100 million goes onto issues of custom and the transportation of these locomotives. We are sitting in the situation where the country makes noise about 2.6 billion rand corruption when in fact the money that went to the directors of Swifambo, it is quite clear that we talk in
10 the region of about 2.8, 280 million rand Chair that is there.

The big question is are the directors of Swifambo, because remember Swifambo had delivered already 13 trains Chair. They have built another seven that is on its way and they were in the process of building seven. It is not a contract, I have heard this commission dealing with contracts where people took money and disappeared.

Not in this particular one Chair. There was no corruption in this particular issue and when I read the
20 judgment, I expected Francis J Chair, to say we think that Mr Montana, Mr Mthimkhulu ... Mr Mthimkhulu Chair was one player.

There was one engineer called Mr Ingwa Sekula who actually drafted the first RFI in this particular matter. Not Mr Mthimkhulu. Now you can see that the Courts,

because they have been presented ... if your own father say my son it is very bad, he comes to Court and say my son is very bad.

Why would the Court not believe the father, and this is what has happened Chair. In my affidavit, I raise a matter Chair about what I found when I went to apply, which I regarded as improper conduct on the part of Francis J Chair, I raise it in my thing, that Judge Francis J met with Mr Molefe during the hearing of the matter.

10 I was there with my legal team and I have said in my affidavit that the conduct was improper and that I am considering actually taking the matter with a judicial service committee, with rather the judicial conduct committee, so that they deal with this matter because I think his conduct Chair, in the middle of this issue, he has met in the morning the legal teams of the respective parties.

Then when we took a break, Mr Molefe joined the process. He met them in the Court. So Chair, I am not
20 surprised when I see a judge, when a judgment is written in that way, but let me tell you something more Chair that will probably shock you.

Mr Soni relies so much on the SCA judgment. Let me tell you what the first, I was not even part of this. The first, the first three paragraphs Chair, written by the

judges, the five judges, the full bench of five judges, they write a damning thing and they attack me Chair.

I said well, I was the CEO of PRASA. The judges maybe take it as it is not factual, it is what Mr Molefe said to the Court in the application. Chair, when I prepared for my affidavit here, and it is in one of the letters I wrote to the secretary of the commission.

The first three paragraphs of the SCA judgment, it comes from a report that is written by Basilius Consolium
10 Professional Services, one of the companies contracted to Werksmans. It was not the judgment first, it was this report.

Word for word Chair, in fact I intended that when I come to testify, I want to read to you this judgment and read to you this report. I asked in my letter to the secretary, who wrote this report Chair. How is it that the judges of the Supreme Court, five judges can actually write in exactly word by word, comma full stop everything.

Chair, there are many other factual inaccuracies.
20 You know what the judges in the SCA say Chair, they say the PRASA locomotives have never even moved. When this locomotives Chair were stopped and they have done 76000 kilometres, the judges made a number of other things Chair and I do not want to pursue them.

So I am saying that we have to respect the Courts.

But I see a judge in the middle of an important hearing, meet with one of the parties on the side. I then have judges who write the judgment and is taking them from a report which actually is not a report that was tabled during, was presented as evidence.

No, it is actually an intelligence report given by Basilius Consolium Professional Services. I want anyone to tell me Chair. So yes, we respect the Courts, but here we are seeing disgraceful conduct in my view. We are
 10 seeing conduct that is inappropriate and we are seeing judgments, and Chair I think that I am prepared there, it is in my affidavit.

It is Annexure, one of the key annexures that I was submitting here. Where I say look at these judges. Look at the judgment. We are being asked as a country if you have got evidence of improper conduct on the part of judges, present it to us.

I included that report Chair and I included the judgment and you will see Chair, that this judgment, I
 20 reject it Chair and you know when the Constitutional Court said it does not have a prospect of success because when it was looking at what happened with the judgment of Francis J ...[intervenes]

CHAIRPERSON: And depending on when it was, I might have been ...[intervenes]

MR MONTANA: Absolutely Chair.

CHAIRPERSON: On the panel.

MR MONTANA: Exactly. Chair, I am not criticising the panel.

CHAIRPERSON: So I am just saying, I am not saying do not say what you want to say, I am just saying depending on which year it was, I may have been on the panel, ja.

MR MONTANA: Yes Chair. No, no but even with that Chair, I do not think the Constitutional Court would have
10 looked at the two judgments and said there is nothing new that will come out of this thing. I respect that. But what I am simply saying, I think it will be irresponsible of me, as a South African, not to tell this commission that or not to go to the judicial conduct committee of the JSC and say here is a judge who met with one party on the side.

That is irregular and that here are five judges who take, who attacks the BCPS report attacks me. They say PRASA was controlled by one Mr Lucky Montana, and with his officials appointed what is it called? Here are the facts
20 Chair.

The board appointed Swifambo, not Lucky Montana. The officials who adjudicated on this committee Chair, is not my officials. Are actually officials who came to this commission to accuse me of all sorts of wrongdoings. Molele, Matangoye.

They were there to do all of those things. So Chair, I am asking myself how to deal with this issue, but I see ... I think that we must protect and defend the judiciary, but you must defend the right things. We cannot defend something that is so obvious that the judges have taken Chair.

It is my evidence, and that is why I think the sooner my affidavit is presented there so that we can deal with what I call disgraceful conduct by the judges in this matter.

10 **CHAIRPERSON:** Have you lodged any complaint with the judicial conduct committee over the years or not?

MR MONTANA: No Chair, not on these issues.

CHAIRPERSON: Ja.

MR MONTANA: Because I have decided that I want to deal with this, I do not want to pursue Chair.

CHAIRPERSON: Ja.

MR MONTANA: But the cost for me, the cost of these court applications have been huge on me. I have taken a strategic approach.

20 **CHAIRPERSON:** Ja.

MR MONTANA: Go to the commission and put them there. What happens, the country will know the truth. But Chair, it would have been the right forum for me to do that, but I do not have the capacity. But I am saying Chair, here is direct evidence and that is what I want to ask Werksmans

when they come to cross-examine me, to say you wrote this paragraph with your people.

How did it find itself into the judgment as the first three paragraphs of this judgment? It is so wrong. It is so disgraceful Chair, and I think we should when we criticise, we should be very specific and Mr Soni, that is why I say that I need to be careful so that I do not even want to undermine what the former, the late President Mandela had said about the Courts.

10 **CHAIRPERSON:** Ja.

MR MONTANA: As if now I am challenging the authority of our international icon.

CHAIRPERSON: Ja. No, that is fine. We in the judiciary always say that we have never said that the judiciary should not criticise but we say it should be fair criticism, it should be well informed you know, be based on facts and not just generalisations and so on.

But you have given us your comments on the two judgments. Mr Soni, do you ...[intervenes]

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Mr Chairperson, I am constrained to raise a number of issues.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Mr Montana, your allegation deal with

one issue first. Your allegation against Judge Francis was put to Judge Francis and he submitted an affidavit. I do not have it in front of me, but I will tell you what he says. Firstly, before I do that.

As I understand it you say on the day, on the first day of the hearing, that is the day when your application be admitted as an amicus was dismissed. Is that correct?

MR MONTANA: That is correct.

ADV VAS SONI SC: He says, sorry. You say on that day
10 you saw Mr Molefe come out of Judge Francis's chambers.

MR MONTANA: Correct.

ADV VAS SONI SC: As I understand it, the hearing was on the ninth floor of the High Court building.

MR MONTANA: I cannot remember the floor.

CHAIRPERSON: Remember to speak close to the mic.

MR MONTANA: Ja, I cannot recall but it was in the Johannesburg High Court.

ADV VAS SONI SC: But whatever floor it was, you say that Judge, you saw Mr Molefe come out of Judge Francis's
20 chambers. Well, Judge Francis said ...[intervenes]

CHAIRPERSON: That answer will not be captured.

MR MONTANA: Oh, it will not be recorded. Yes, indeed Chair I can confirm that.

ADV VAS SONI SC: Judge Francis says in his affidavit, that at that time he was based on the fifth floor and the

hearing as I understand it, was on the ninth floor. So you could not have seen him, you could not have seen Mr Molefe come out of Judge Francis's chambers. You are smoking Mr Montana.

MR MONTANA: Chair, I am saying I do not know. Do you want to deal with it? I was asked Chair to respond to this judgment and then ...[intervenes]

CHAIRPERSON: Well, what Mr Soni is doing in fairness to Judge Francis who was asked to comment on your
10 allegations and supplied an affidavit, he is putting to you Judge Francis's version, which is what he is saying.

MR MONTANA: Okay Chair.

CHAIRPERSON: You might react, you might want to respond to that or he, but he is saying this is the version that the commission has obtained.

MR MONTANA: No, no I am glad that the commission has followed that Chair. I have not seen the response and I think at the right time I will deal with that, including the witnesses that I was with and that is why I put it that
20 ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: The conduct in that way. So I am happy. I will not respond now, because I did not even know where his office is. I said I saw him and I think that was the ... that is where in fact from my legal representative, the

Honourable Judge in the morning even met with the different legal teams before the start of the case.

ADV VAS SONI SC: Were you part of that meeting with Judge Francis?

MR MONTANA: No, no I was outside. I arrived early when they were still meeting.

ADV VAS SONI SC: So when you say you were outside, outside where?

MR MONTANA: Outside, outside. Outside the Court.

10 **ADV VAS SONI SC:** Outside the Court.

MR MONTANA: When they were meeting in one of the rooms.

ADV VAS SONI SC: Yes. At the Judge's chambers. That is where they normally meet.

MR MONTANA: Can I suggest that I see the response of the judge, so that by the time we deal with it, because remember it is not on this specific matter, it is ...[intervenes]

20 **CHAIRPERSON:** Have you not been given a copy of the affidavit?

MR MONTANA: Of his response?

CHAIRPERSON: Ja.

MR MONTANA: And I look at that and say, and decide whether I even stand by that, and the witnesses.

CHAIRPERSON: Ja.

MR MONTANA: Because I think that I was reacting to the judgment and I made this point, and it is there in my affidavit Chair.

ADV VAS SONI SC: I am told that the affidavit was served on you.

MR MONTANA: No. I have not seen it Chair.

CHAIRPERSON: Yes.

MR MONTANA: So let me not say no, but I have not seen it.

10 **CHAIRPERSON:** Yes.

MR MONTANA: All the affidavits that I was informed that people wanted to challenge including Werksmans, Judge Francis J as well as ...[intervenes]

CHAIRPERSON: Minister Peters

MR MONTANA: As well as, I think there was a third one or Mr Pollow Sullivan. So I was informed, but I never saw the actual papers.

CHAIRPERSON: You were told, but you were not given the actual affidavits?

20 **MR MONTANA:** No, no I did not see them Chair. No, I was ... at that, I was ja. So Chair, I will double check ...[intervenes]

CHAIRPERSON: You will get an opportunity.

MR MONTANA: And then when we deal with my affidavit, we can deal with those in much greater detail Chair.

ADV VAS SONI SC: But you know Mr Montana, and please you must accept that I cannot stand here and allow an allegation, a serious allegation to be made against a judge of this country and when I know what his version is not put it to you.

You may respond on a different time ...[intervenes]

CHAIRPERSON: No, no you can ... you can certainly put it. All he is saying is he is not able to respond.

ADV VAS SONI SC: I understand.

10 **CHAIRPERSON:** But definitely ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: It is only fair that the public who have heard him ...[intervenes]

ADV VAS SONI SC: Heard him.

CHAIRPERSON: Hear what the other side of the story is.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So go ahead.

ADV VAS SONI SC: But I am going to raise a slightly different issue. That is the day on which he dismissed
20 your application to be admitted as an amicus. Is that right?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: Now I understand that you were separately represented in that application. In other words you had an attorney at least when you brought the

application to be admitted as an amicus.

MR MONTANA: No Chair, I had an attorney and there was a counsel who argued the matter.

ADV VAS SONI SC: Yes. Now you saw Mr Molefe leave Judge Francis's chambers on your version.

MR MONTANA: Ja, I saw him even arrive in Court, Mr Molefe and then I saw him when he came from the very same room that I mentioned.

ADV VAS SONI SC: So your answer is yes?

10 **MR MONTANA**: Yes, the answer is yes.

ADV VAS SONI SC: Did you tell your attorney and your counsel?

MR MONTANA: I did tell my attorney. I was with my ...[intervenes]

ADV VAS SONI SC: Your counsel?

MR MONTANA: I tell my attorney Chair, no I did not discuss with the counsel because he was appointed of course by the attorney but I was with my attorney Chair and we spoke to Mr Molefe in fact on that day.

20 **ADV VAS SONI SC**: We are not talking about your speaking to Mr Molefe. I want us to deal with the questions I am asking Mr Montana.

MR MONTANA: But Chair, I have confirmed that. I have confirmed that Mr ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: Alright. So did your, what was your attorney's reaction to that? I mean this is as outrageous and a commitment to judicial duties as one would find.

MR MONTANA: No, no, no. Chair, I think I must take exception to this. You see Chair, now I hope that Mr Soni will have the same energy when we also deal with the next, with the other matter phrased. You said and I think you have guided us.

You said Chair, that it is good that Mr Soni had put
10 forward the version. He is proceeding to argue on behalf of the Honourable Judge. Let me be served with the documents, take advice on the issues and reply.

CHAIRPERSON: Ja.

MR MONTANA: I think that is the correct way Chair.

CHAIRPERSON: Yes.

MR MONTANA: Because if we do that, then let us argue and I bring the two reports.

CHAIRPERSON: Ja.

MR MONTANA: And read it out to you and then I do not
20 know what Mr Soni ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: I thought your guidance was that Chair ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: You have said criticism of the judiciary,

where there is a sound basis. You know, when Mr Molefe came out of that room Chair, when I was with my legal team, the attorney, okay. He came, we even spoke to him. he was hugely embarrassed Chair, but I am suggesting Chair that instead of Mr Soni taking the judge as, he can come and put his version here and say Montana is wrong.

I see the affidavit but he is arguing on this particular issue. I have then been given the benefit of even what the judge has said.

10 **CHAIRPERSON:** Yes.

MR MONTANA: So if I have to come back and answer to it, I will do exactly that Chair.

CHAIRPERSON: Yes, no I think what should happen Mr Soni is state what the judge's version is to the extent that Mr Montana says he has not been given a copy of the affidavit. Let him be given a copy of the affidavit and he will let us have his reaction to it, and then let us take it from there, but it is important that because he has put his version about the matter, Judge Francis's version we also

20 know.

MR MONTANA: And Chair, by the way I have put my version about the five judges of the SCA as well.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: This happened, this incident of Judge Francis, you are saying this happened in July 2017. Is that

correct?

MR MONTANA: Chair, I do not have the actual dates.

ADV VAS SONI SC: I ...[intervenes]

MR MONTANA: Okay.

ADV VAS SONI SC: Had you made a complaint to the Judicial Conduct Commission?

MR MONTANA: No, no Chair, I did not make but I made reference to that, that I am considering laying a formal complaint. I mention that in my affidavit, yes.

10 **ADV VAS SONI SC**: Now when did you first see PRASA's status in the Swifambo...?

MR MONTANA: Well, Chair it was ...[intervenes]

ADV VAS SONI SC: But was it – it had to be before your application to join this ...[intervenes]

MR MONTANA: Indeed Chair.

ADV VAS SONI SC: Right. Now, on your version, that contained not only misrepresentations, it contained... by PRASA's version. PRASA's version before court. Is that correct?

20 **MR MONTANA**: That is correct, Chair.

ADV VAS SONI SC: Did you tell you – this was a R 3.5 billion contract. Did you tell Swifambo's legal representatives: Look, you are asking for this. Now you are resisting the setting aside of this contract. I have information that I can give you and I do not mind deposing

to an affidavit deposing that application but it is based on false?

MR MONTANA: No, no Chair. No, no Chair. Chair, I have never told. We know, here in this Commission as we sit here, we know that I made a choice, taking my legal advice that I should do it in that way because at that time we were careful not to be seen to be supporting one party over the other but I knew for a matter of fact..

And you know Chair the one thing I do, I write
10 my own affidavit and I then sent them to the legal – I write the facts, I write the story and say tell me what I am getting wrong, correct it and all of those things.

The affidavit on Swifambo, I think it is 76-pages, where I detail all of those things. And I say in that in fact PRASA, which means Mr Molefe and Werksmans have withheld valuable information ...[intervenes]

ADV VAS SONI SC: But Mr Montana, my question is a different question. You knew that they have would have information?

20 **MR MONTANA**: Yes, and I exercised my right... You are asking me why did not I do something as I did not elect to do it at time.

ADV VAS SONI SC: Yes.

MR MONTANA: How does it help state capture, Chair, that I decided to be – to make a different application and

not help? I choice not to work with Swifambo. I wanted to go and assist the court so that the court can see the truth on this issue.

ADV VAS SONI SC: Can I ask you? Did you know Mr Auswell Mashaba at that time?

CHAIRPERSON: Mister...?

ADV VAS SONI SC: Auswell Mashaba.

CHAIRPERSON: Auswell Mashaba?

ADV VAS SONI SC: Yes, Chair.

10 **MR MONTANA:** At that time you are referring to?

ADV VAS SONI SC: The time of the court case.

MR MONTANA: No, no. At time, Chair, I knew him.

ADV VAS SONI SC: You knew him?

MR MONTANA: Ja.

ADV VAS SONI SC: When did you meet – when did you first get to know him?

MR MONTANA: Chair, I think I have first met him after PRASA in my contract.

ADV VAS SONI SC: That is Swifambo contract?

20 **MR MONTANA:** The Swifambo contract, yes.

CHAIRPERSON: Mr Montana ...[intervenes]

MR MONTANA: I think that is in ...[intervenes]

CHAIRPERSON: ...so that I can hear you or closer to the mic.

MR MONTANA: Oh, sorry Chair.

CHAIRPERSON: Ja.

MR MONTANA: Chair, I think it should have been 2012, ja.

CHAIRPERSON: H'm?

MR MONTANA: When I first met Auswell Mashaba ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...and his entirety Swifambo Team, it was in 2012 after they were awarded the contract.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: Now once the review application had been brought, you were aware that if the contract was set aside, Auswell Mashaba stood to suffer severe loss.

MR MONTANA: Swifambo, Chair, with all his parties in it, yes, they would suffer, yes.

ADV VAS SONI SC: Yes. Did you tell Mr Mashaba: Look, this is what has happened. I have seen this. This is a matter that you can take up. That PRASA's – the Chairperson of PRASA's board, the deponent to its affidavit
20 had just come out of the judge's chambers.

MR MONTANA: But Chair, again, I deposed to an affidavit, a 76-page affidavit. I put all the issues of why I thought the court – because ultimately it is the court that set aside the contract, not PRASA. I put an affidavit. I put the reasons and the facts and a lot of supporting affidavits.

For example, I put in documents that shows that not only Swifambo but PE hindered. I have also a report, for example, done by the GM, Treasury at PRASA that makes a comparison of the different bids. I put that in my evidence to show that the story that, for example, only Swifambo was given an opportunity, that is false. So before ...[intervenes]

ADV VAS SONI SC: You have gone through that Mr Montana. So ...[intervenes]

10 **MR MONTANA:** No, no. But can you give me – can you please allow me?

CHAIRPERSON: Hang on. Let Mr Montana finish his point.

MR MONTANA: Exactly, Chair. So I am saying Chair that – Mr Soni says to me, after I have applied to court, that why did I not discuss the matter with the Swifambo? I did not have any obligation to discuss with Swifambo. I did not have to go to Swifambo. If he claims that I was not happy and at that time Chair you will recall maybe you
20 want to deal with the Serega(?) matter. PRASA had adopted a strategy, this litigation strategy. They were doing that and they were using my name. I was being dragged and – but I was not. Being called to respond, it is before myself, okay?

CHAIRPERSON: H'm.

MR MONTANA: In this particular – you know, when you look at the Swifambo matter, the initial assertion by the – on the PRASA papers, was that the Swifambo matter was approved by Lucky Montana. Now we know legally they want to change the papers because they realise that that was false. It was a false assertion ...[intervenes]

CHAIRPERSON: Ja, but your answer is, as you say, you did not because you had no obligation.

MR MONTANA: I did not have an obligation Chair.

10 **CHAIRPERSON:** Okay.

MR MONTANA: And ...[intervenes]

CHAIRPERSON: Mr Soni.

MR MONTANA: Yes.

ADV VAS SONI SC: You see, we are talking about a slightly different issue here. When you found your application to be an... You have not seen Mr Molefe, on your version, leave Judge Francis' chambers but after that you became, on what you have said today, that this judgment was made after an irregular communication
20 between Mr Molefe and Judge Francis.

MR MONTANA: Chair, I do not think Mr Soni ...[indistinct] ...[intervenes]

CHAIRPERSON: Mr Soni, I think this issue of his allegation about the judge's, let us deal with it once he has a look at Judge Francis' affidavit to be – and let him react

in terms of an affidavit in response if he wants to.

ADV VAS SONI SC: As it please Chair.

CHAIRPERSON: Then if – then we can look at how it should be dealt with. There is a question of the Judicial Committee but there is the question – the issue that it has not been – a no complaint that has been lodged over a certain time but I think let us get that sorted out and then let us then look at it. But the Judge Francis' version, I would like you to put its essence or the role of it publicly
10 as well.

ADV VAS SONI SC: Yes, Chair.

CHAIRPERSON: So that it is heard.

MR MONTANA: So Chair, without – will I also be send the responses of the five judges of the SCA on that judgment?

CHAIRPERSON: Well, I do not know if there are any affidavits from those – from ...[intervenes]

MR MONTANA: But Chair I have raise(?) proper conduct about the five judges.

CHAIRPERSON: Yes.

20 **MR MONTANA:** And nothing, but the Commission should also do the same, not on judge.

CHAIRPERSON: Well, Mr Soni has told – has mentioned about Judge Francis. Mr Soni, you want to say anything about the SCA judges?

ADV VAS SONI SC: Perhaps this is the right time to say

it.

CHAIRPERSON: H'm?

ADV VAS SONI SC: We have submitted what Mr Montana said about in court, the Supreme Court of Appeal judges ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...to the President of the Supreme Court ...[intervenes]

CHAIRPERSON: Ja ...[intervenes]

10 **ADV VAS SONI SC:** ...by the Supreme Court of Appeal.

CHAIRPERSON: Ja.

ADV VAS SONI SC: And we indicate that should they wish to say anything, we would place that on record. We have not received a response from the... of the SCA.

CHAIRPERSON: Yes, okay. No, that is fine. So, Judge Francis' affidavit that the Commission has, the Legal Team will make it available to you and then – to the extent that you reacts to it once – reacts in terms of an affidavit, responding and we will take it from there. In terms of

20 ...[intervenes]

MR MONTANA: Can I ask another question? I am sorry, Chair.

CHAIRPERSON: Ja?

MR MONTANA: I do not want to delay the proceedings.

CHAIRPERSON: H'm?

MR MONTANA: Is it – we are all accountable. I am here because of accountability. To come and answer on certain allegations made against me. I am making allegations against the judge. And I thought that, Chair, the stronghold would be that you are raising a serious allegation within that – the Supreme Court of Appeal because it goes to assure even us.

If they say: No, you are wrong. We got this thing in this way. That is something else Chair. But I am
10 not sure if I want to leave it at that with that – I am assuming that he says that they had responded or are you saying we are leaving the matter because they did not respond? Because I think from an accountability point of view ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

MR MONTANA: ...it is not the right thing to do.

CHAIRPERSON: Well, let me say this Mr Montana. As you would know by now, the Commission has got a Rule 3.3. Notice process. That is, if there is some submitted an
20 affidavit or statement that implicates you or may been seen as implicating you, you are given a copy thereof and you are given an opportunity to respond or apply for leave to cross-examine that person and so on.

That is an election. You are not obliged to do so. So I have a suspicion that that is what have may have

happened with the SCA judges but it might also be that it was not given as a Rule 3.3. Notice and maybe it was simply given as affording them an opportunity to know that there is somebody who has some allegations or criticisms about their judgment and do they want to say something.

There are, of course, as you know, situations where even if somebody who has been given a Rule 3.3. Notice has chosen not to respond, where the Commission can – the Chairperson can compare and there are
 10 situations where people can be issued with summons and so on. So it depends on a lot of things. So I think that is the explanation.

ADV VAS SONI SC: Chairperson, I should just point out. In fairness to the judges concerned.

CHAIRPERSON: Ja?

ADV VAS SONI SC: The allegations made in Mr Montana's affidavit in respect of Judge Francis contained this allegation that he had seen Mr Molefe leave Judge Francis' chamber. Now that, obviously, is an
 20 allegation that needed to be confronted head on where the judge says either I did it, I did not do it, it could not have happened because of whatever. So that is the one issue.

In regard to the judges of the Supreme Court of Appeal. The allegations were of a general(?) nature. The allegation – and I listened very carefully to the allegation

today that the first three paragraphs of the judgment of the SCA replicates what had been said in some report. Now I do not think – and it has been a bit of time since I read Mr Montana’s affidavit – I do not think that that is what was said in so many words in that affidavit.

The crux of the allegations were that those judges are corrupt because they misapplied the law. Now in fairness to the judges concerned. What do they say? Judges speak through their judgments. There is nothing in
10 Mr Montana’s affidavit that deals with that issue. So I just wanted to place that on record.

CHAIRPERSON: Ja.

ADV VAS SONI SC: So the public out there does not think that there are judges who regard themselves as unaccountable.

CHAIRPERSON: H’m, h’m, h’m.

ADV VAS SONI SC: I have little doubt that – they all know that they are accountable and they do regard themselves as accountable.

20 **CHAIRPERSON:** Ja.

ADV VAS SONI SC: But in these circumstances, it would be unfortunate to create the impression that there is even – well, not only an obligation – even a judicial duty for them to respond.

CHAIRPERSON: H’m, h’m.

ADV VAS SONI SC: Because when one looks at the affidavit, there is not anything specific against any of the judges.

CHAIRPERSON: No, no that ...[intervenes]

MR MONTANA: But Chair can I really object to this? Because I thought ...[intervenes]

CHAIRPERSON: What would you like to say?

MR MONTANA: Because I thought you guided us, Chair, to take a more balanced approach.

10 **CHAIRPERSON:** H'm?

MR MONTANA: That there are no counts Chair. You know, my criticism – and I do go into detail – not on this specific matter Chair. I never accused the judges of corruption. I did not do that in my affidavit. And I think that we should not go to that. I spoke about improper conduct, Chair, in my thing.

CHAIRPERSON: H'm?

MR MONTANA: If I leave this matter, there are eight other matters where I said the judges made the – make errors.
20 give only one example where they said the trains arrived and they have never moved. It is a factual issue. The trains have done 76 000 km's but I make the point... You see, Chair. I am trying to be balanced here. I am trying to here And make sure that I do not throw stones.

CHAIRPERSON: Ja.

MR MONTANA: The truth of the matter is. I am saying
And it is a serious issue Chair because if I judge writes a
report Or a judgement Which is. - I respect that. I have no
question with that. But here is a judgement And this
judgement - the attorneys at. Werksmans are fighting this
issue on behalf of PRASA.

CHAIRPERSON: Yes, but hang on Mr Montana. You are
just saying earlier on: I gave guidance. The only reason
why Mr Soni Was speaking about the SCA judges Is
10 because they have not filed an affidavit And you raised the
issue Are they not accountable? He was explaining that,
but in terms of The way forward, I think we maybe we are
done in terms of ...[intervenes]

MR MONTANA: For the record Chair. I had never
accused judges of corruption.

CHAIRPERSON: Yes.

MR MONTANA: That I must say.

CHAIRPERSON: Yes, ja.

MR MONTANA: We did not deal with it in that way.

20 **CHAIRPERSON:** Yes. But also, I must just say. one of
the things that one has got to think about in the context of
the issues you raise about the High Court judgement and
the High Court judge and the SCA judges is that - is the
question of to what extent are they all those issues. Would
all of those issues be properly dealt with by the

Commission as opposed to going to the Judicial Conduct Commission if we just specifically established to deal with complaints against judges.

So then that is something also that we will have to think about. Ja. Okay alright. we are at two minutes to six. We normally take a 10 minutes break every two hours. so let us take a 10 minutes break and then we will continue.

ADV VAS SONI SC: As you wish.

10 **CHAIRPERSON:** We adjourn.

INQUIRY ADJOURNS:

INQUIRY RESUMES:

CHAIRPERSON: We will see at seven. We will see once we are at seven o'clock and talk about whether we continue or not but let us continue for now. Ja.

ADV VAS SONI SC: Chairperson , I need to place on record that I have looked now again at Mr Montana's affidavit and in fairness to Mr Montana, he did not accuse any of the judges of being corrupt. What ...[intervenes]

20 **CHAIRPERSON:** He did not accuse any of the charges of corruption?

ADV VAS SONI SC: Judges are being corrupt.

CHAIRPERSON: Yes?

ADV VAS SONI SC: but what he did say is that the judges of the SCA had deliberately lied and eat considered the

conduct to be disgraceful but it is, as I say, in general terms but I - in fairness to Mr Montana I do not want it to be said that I looked and didn't correct the record. It is correct that Mr Montana didn't make that accusations. And it came about, Chairperson, because I haven't looked at his affidavit...

CHAIRPERSON: Yes, okay. No, that is fine.

ADV VAS SONI SC: But it needs to be placed on record.

CHAIRPERSON: Yes. No, that is fine.

10 **ADV VAS SONI SC:** Chairperson, you have suggested in regard to the Mr Montana's allegations against Judge Francis and obviously against the SCA at one would look at it again after Mr Montana has been given judge Francis' affidavit ...[intervenes]

CHAIRPERSON: Affidavit, yes.

ADV VAS SONI SC: ...which I understand he has been given but I accept he - it may not have reached him.

CHAIRPERSON: Yes, ja.

ADV VAS SONI SC: But we will hopefully obviously have
20 to deal more carefully with that because reputations are at stake.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And given what has happened today, the SCA might take a slightly different approach.

CHAIRPERSON: Ja. No, no that is fine. And

Mr Montana's clarification that he has not and is not accusing any judge of corruption might be an important factor in considering whether - to the extent that he may wish to ventilate those issues that may be his concerns might be better dealt with in the judicial conduct committee ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: ...because from the commission's side we have to always keep our eyes on the terms of reference, you know.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So - but let us look at it once he has had a chance to look at Judge Francis' affidavit.

ADV VAS SONI SC: Yes, as it has been said that he must keep in our lane. [laughs]

CHAIRPERSON: Yes, we must keep in our lane. Ja, ja. Okay alright. Let us continue.

ADV VAS SONI SC: Yes. I just want to - now I have finished, Mr Montana, with the rest of what Mr Molefe says in his effort over. It is at page - in regard to Swifambo - it is at page - paragraph 65, page 19. He says:

“in 2015 the new board instituted disciplinary proceedings against Mr Mthimkhulu but he resigned before any hearing could be heard.

Significantly, the SCA had found that

Mr Montana had been a party to Mr Mthimkhulu's conduct..."

So let us leave out the finding of the SCA because that we have been through. May I just ask you in relation Mr Mthimkhulu? Are you aware about the prospect of a disciplinary hearing and he's resigning unaccounted that?

ADV VAS SONI SC: No, Chair.

MR MONTANA: No, Chair.

10 **ADV VAS SONI SC:** Then Mr Molefe says that of you – that is Mr Montana – the SCA said the following:

"He controlled PRASA and its staff, he was obstructive and attempted to cover up his role in various corrupt transactions including the award of the tender to Swifambo.

The Public Protector had experienced similar obstruction in her investigation..."

Now that is the finding and I know it is something that you disagree with.

20 **MR MONTANA:** This, actually Chair, is the summary of what I said comes from another report but ...[intervenes]

CHAIRPERSON: Yes, you have ...[intervenes]

MR MONTANA: ... made the point Chair.

CHAIRPERSON: Ja, he has made his point, ja.

ADV VAS SONI SC: Alright. Now, then having seen that

the SCA in the Swifambo matter made reference to what the Public Protector found. Mr Montana, Mr Molefe deals with her report. And can we do it in the same way we have done the SCA report?

MR MONTANA: Yes.

ADV VAS SONI SC: He says at paragraph 68:

10 “Among the findings that the Public Protector made in her report... that in a number of cases PRASA extended the scope of tenders which constituted maladministration and improper conduct.

In one case, a tender for two train stations was later extended to seven stations given the contract a value of some R 1.95 billion...”

Mr Montana, just so that you know that it is in the report. Chairperson, it is at the – in the file containing the Public Protector’s report at pages 358 and 359. I am just placing ...[intervenes]

CHAIRPERSON: Ja, just to say where it is, to be found.

20 **ADV VAS SONI SC:** Yes. And of PRASA’s and Mr Montana’s approach, the Public Protector said:

“It was difficult to get information from PRASA with this being a main cause or factor behind the delay in finalising this investigation which was lodged in 2012.

Promises for documents were not kept and even a request for assistance from the old board yielded very few source documents...”

Now – then she continues the – the report continues and I have indicated it is at page 64, paragraph 3.5 of the report.

10 “It was also discomfoting that Mr Montana boasted about the failure of compliance to provide documentary evidence on some allegations and asked that I adjudicate those matters in his favour when he failed to provide legitimately requested documents...”

And then she – Mr Molefe says:

“The PP also found that the CEO suspended the employees without following proper disciplinary processes...”

And although there is a page reference to 375, on mine it is 379.

20 “And that the conduct of habitually suspending employees contravenes PRASA’s disciplinary code and constitutes maladministration and improper conduct...”

Then at paragraph 70, Mr Molefe says:

“The Public Protector also noted that there was a culture of poor information management

or hiding of information that could provide evidence of maladministration...”

And at paragraph 71, Molefe quotes this from the report is:

“Amongst them, immediate action, the Public Protector said, should be taken as the following:

- The board must take cognisance of the findings of maladministration and improper conduct by Mr Montana and other functionaries.
- It must report to the National Treasury and the Auditor General particulars of the alleged financial misconduct and the steps it took.
- And support National Treasury in conducting a forensic investigation into all PRASA contracts above R 10 million from 2012 and then take appropriate measures to address the findings...”

And the reference in the report is there. He says:

“Given all these concerns which had been add the public space, one would have expected that the board’s decision to accept

Mr Montana's resignation would receive support from those who cared about PRASA, its employees, the commuters it serves and the public good..."

Then at paragraph 73, he says:

"Sadly, as I note in the rest of the affidavit, not only was there no support for the board when it began its clean-up but in fact it was verified and effectively disbanded..."

10 Leaving out the other matters, going to be the Public Protector's report, Mr Montana, is there something you want to say?

MR MONTANA: Yes, Chair. Just briefly, Chair. Firstly, of course, we know that I have challenged the report. Instituted the review application in this particular matter, Chair. And dealt with the ...[intervenes]

CHAIRPERSON: Sorry, Mr Montana. Just lower the mic.

MR MONTANA: Sorry, Chair. My apologies.

CHAIRPERSON: H'm.

20 **MR MONTANA**: Chair, I think – I put the review application in Pretoria, challenging the – I put an application I think a few days after the PP released the report. And by the way, let me again repeat. When the report was issued, Chair, I was not at PRASA. And I think, I find it very strange that particularly in paragraph 72 that

Mr Molefe could use the Public Protector's report as they were dealing with my – I have left PRASA. I was not there. I do not know if you see that Chair.

CHAIRPERSON: I am looking at 72.

MR MONTANA: Ja ...[intervenes]

CHAIRPERSON: Yes.

10 “Given all these concerns which had been add
the public space, one would have expected
that the board's decision to accept
Mr Montana's resignation would receive
support from those who cared about PRASA,
its employees, the commuters it serves and
the public good...”

I understand that to mean that given what the Public Protector recorded as having found in the previous paragraphs, the fact that they accepted your resignation should have got support from others that – those who care about PRASA. Ja.

20 **MR MONTANA:** Chair, I am simply saying there is no
relationship between my resignation and the Public Protector's report.

CHAIRPERSON: H'm.

MR MONTANA: I resigned in March 2015.
15 March 2015. I left PRASA on the 15th of July 2015. The Public Protector's report was in August. So it has got no

bearing on all of the things that Mr Molefe is dealing with.

CHAIRPERSON: H'm.

MR MONTANA: But Chair let me raise ...[intervenes]

CHAIRPERSON: But before you do that. Let me tell you what my understanding is. My understanding of what Mr Molefe is saying here is that although the – I am now putting it in my own words – although the report of the Public Protector may have come after you had left, it related to things that happened while you were Group CEO
10 of PRASA and therefore anyone who becomes aware of these findings by the Public Protector and thinking about the fact that they accepted your resignation, if they care about PRASA, they should accept. That is how I understand that.

MR MONTANA: No, I accept that Chair.

CHAIRPERSON: Okay.

MR MONTANA: Thank you very much.

CHAIRPERSON: Okay, okay.

MR MONTANA: So let me raise just a few issues.

20 **CHAIRPERSON:** Ja.

MR MONTANA: Because I have put – I said I have put in a review application ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...in August 2015. The first part of my review application, I dealt with the errors of law that the

Public Protector had committed in the PRASA investigation. One of the things I raised Chair is the fact that the Public Protector, for example, applied Section 38 of the PFMA which actually does not apply to PRASA. Even some parts of the contract and all. So I have detailed those. No, I will not repeat.

CHAIRPERSON: Ja.

MR MONTANA: I will not repeat that here Chair.

CHAIRPERSON: Ja.

10 **MR MONTANA**: But Chair let me – and then, of course, in February of 2016, I then moved the legal constitutional issues.

CHAIRPERSON: H'm.

MR MONTANA: To then pick each and every allegation and a finding on that report. I did that Chair. Of course, the Public Protector had promised that she will publish volume 2 because she has only dealt with 50% of this, Chair. She published volume 2 of her report in six months before she left, before she leaves office. She left office
20 without publishing that report which had an impact, of course, on the ability of our review application without all those issues not being – because we could not challenge half the report that is there, Chair.

Now, Chair, if you look at paragraph 68
...[intervenes]

CHAIRPERSON: Before you do so, can I just establish where that review application is in terms of it being pursued? It seems a long time.

MR MONTANA: It took almost three years for the PP office to actually finalise, after Advocate – I think she left in 20...

CHAIRPERSON: 2016, Adv Madonsela.

MR MONTANA: 2016.

CHAIRPERSON: Ja.

10 **MR MONTANA:** And I think that the other report was only finalised – was it last year, volume 2, which are two reports that actually do not actually speak the same language, as it were. Chair, I have written to the office of the Public Protector, that is Advocate ...[intervenes]

CHAIRPERSON: Before you continue, why should – well, I understand you to be saying to the extent that your review application might not have been finalised, it was because there was the second phase, as it were, of the Public Protector's investigation. Now you were not
20 satisfied with certain findings or things about the first Public Protector's report. Why could that not be dealt with on its own?

MR MONTANA: Well, Chair, that was the – the advice I got was that it is proper to deal with the report in its total because at that time ...[intervenes]

CHAIRPERSON: Because, as I understand it, the first one was viewed as final in regard to the matters that it was dealing with and then – or that is the impression I had.

MR MONTANA: No, Chair, she postponed a lot of matters to volume 2 of her report.

CHAIRPERSON: Yes, ja.

MR MONTANA: Which she did not then do.

CHAIRPERSON: Which she could not do.

MR MONTANA: Which she could not do.

10 **CHAIRPERSON:** Because her term expired.

MR MONTANA: Well, Chair, she said within six months. At that time she left, so the deadline she set herself, she could not honour, Chair.

CHAIRPERSON: Ja.

MR MONTANA: But I followed that with the office of the Public Protector until they have course produced volume 2 of the report. Volume 2 of the report, not the same line, Chair, that has been taken in Derailed, completely different. I think that in all the matters it actually
20 dismissed all the matters but one where it deals with the issues of the sale of a property between Transnet and PRASA and she say they should have followed a tender process, as it were.

Now there was another court challenge to volume 2, Chair, which came from one of the organisations in Cape

Town to say she did not do a proper investigation and all of those things.

So there have been a number of issues but, Chair, if I could just highlight a few things.

CHAIRPERSON: Ja.

MR MONTANA: That I have raised, without taking the time.

CHAIRPERSON: Ja, ja.

MR MONTANA: You know, Chair, the heart of the Public
10 Protector report and the finding quoted by Mr Molefe is in
paragraph 68 and that speaks to Siyagena. When you say
the report of the Public Protector – of course I said in my
first – the review application, I dealt with the errors of law,
I have dealt with the Public Protector, Adv Madonsela.
Actually not even understanding PRASA, applying even
legal prescripts that were not applicable to PRASA. I think
I have attached again in my affidavit, I have attached both
my review application as well as a supplementary affidavit.
In that supplementary affidavit, Chair, I deal with then the
20 actual details. Now one of them is actually in 68. This is
about Siyangena, Chair.

Chair, the Derailed, Adv Madonsela said – stated
there, Chair, that there were two stations that were
extended to seven stations giving the contract a value of
some 1.95 billion. That is not correct, Chair. Before 20 –

in the period leading up to 2010 there were two stations that were modernised and Chair, let me clarify it because, by the way, before I go into that, you asked a question to Ms Ngoyi during the evidence to say were companies that were appointed pushed aside and Siyangena was put in there? She confirmed, Chair.

Now I want to – and I said when I am here I need to clarify. It is not correct, Chair. Companies were appointed to modernise and build stations. They continued.
10 Siyagena was dealing with the installation of systems into those stations, so there were no companies that were pushed aside and Siyangena pushed in them.

Chair, here in 68 we are dealing with 2009. Intersite, a division of PRASA appoints Siyagena as what we call a nominated or a preferred or nominated subcontractor. So they appoint them through a process, a competitive process and say when we appoint people to work on these stations, their people are going to install these systems, access controls and everything, it is going
20 to be Siyangena. So Siyangena is appointed in that way.

Now there is another project, Chair, awarded to Siemens. Siemens is doing the rest of the network. Now these were 2010 project. In 2010, Sir, in January 2010, just a few months before the World Cup Siemens had then withdrawn from a number of PRASA stations because there

was disagreement about monies, how much should be the value of some of the stations, so they pulled out of that. PRASA had four months to prepare the stations for 2010.

Intersite with PRASA then decided that no, we have got a company that has been properly appointed to do this work, it is on site, we are not talking about building of stations, it is not the change, it is using the very same company to extend because it has been appointed for that.

So it is two stations and the stations affected,
10 Chair, were seven. Public Protector, the value of the contract, Chair, you will not believe it, R68.4 million for all those service stations.

CHAIRPERSON: 68?

MR MONTANA: 68.4, not billion, millions.

CHAIRPERSON: Million, ja, millions.

MR MONTANA: Now that 68, Chair, there is the drama in that report the first thing, other than applying wrong reports and prescripts of the law, despite having all evidence before her including completion certificates of
20 this project, she made three findings. The first one is about the fact that these projects cost R1.9 billion rands. In submissions I deal with this issue, Chair. R68.4 million and not R1.9 billion. So her findings is incorrect. Then she went to create drama about this maladministration based on something that is factually incorrect.

She then also says, Chair, she makes another finding in relation to paragraph 68, she says PRASA awarded work, for Siyangena to do this work under the pretext that this is 2010 work but this work was only done in 2011. Chair, it is incorrect. We have provided the Public Protector during investigation both completion certificates, the launches, these stations were launched around the country by even Minister S'bu Ndebele in the period leading up to 2010. The last station was actually
10 completed on the 8 June, just three days before the 2010 World Cup. The Public Protector made serious errors, Chair, in this report.

Thirdly, the Public Protector, Chair, when she says – she talks about me, she says Montana went to Park station and fired companies there, Chair. Okay? And it is true, I went to Park station. When I get there the station is filthy, we have got seven state companies that are involved in cleaning the stations, they are being paid and I said to my team, I do not fight, I said to my team if you do not deal
20 with these companies then I am going to fire you guys because here is a station, the second biggest station in the continent. I say if the President come here and find the terrible conditions, yet we are paying people for maintenance and cleaning, we have got to take action. Those companies were then subsequently dismissed and

the PRASA Cres, which is our property side, which was the PRASA's property section then put alternative measures for these stations to be cleaned. No, Chair, the report comes Montana irregularly fires companies, Chair. Those are the findings.

I can go on and on, Chair, but I am saying that the report of the Public Protector falls(?) because of both the legal as well as the massive factual inaccuracies, I – you know, this report does not speak about me, Chair, and I
10 think it is very important. Out there people think the Public Protector is about Montana and number two, it is about corruption. I think we have read all the findings of the Public Protector. She talks about maladministration, power and all of those things, Sir, about the employees that were suspended without following of procedures. She never mentioned a single finding in Derailed. In Derailed, not in the second volume of even this corruption that we hear. When you hear people – a Public Protector, some of them even feel very strongly, has made serious finding of
20 corruption, none, Chair. I was the only person, you know, Chair, who challenged this report despite the fact that it made a number of findings because I became the face of this report and it was so unfair, Chair, I mean, one of the clauses of the PRASA SCM policy says when employees of PRASA or any business of PRASA wants to use a service

without got through a competitive process, where it is an emergency and so on, they need to motivate and get the approval of the Group CEO.

Chair, there is one finding in Tshwane where the Public Protector says a chap by the name of – an employee by the name of Buthelezi approved the extension of a security contract without following what the policy provides, that you must motivate and get the approval of the Group CEO before you could do that. So she is right.

10 But comes the next one where employees, not that are initiate, a business of PRASA would motivate in line with that clause. It is there in the policy. I approve. That constitute maladministration. When it is not done, he did not follow policy, when it is done, it is maladministration, that is [speaking in the vernacular] which means whether you are – you are damned whether you do it or you are – I do not know, something like damned if you do it...[intervenes]

CHAIRPERSON: Ja, you follow the law you ...[intervenes]

20 **MR MONTANA:** Exactly, Chair. So this report, Chair, and that is why I challenge, but I am glad Adv Mkhwebane, had actually produced a report, no drama, very factual, Chair.

This other report where even people can even say these stations were completed in 2011. When we launched, we have got pictures, we have got ministers

there, the stations were used for 2010 and the Public Protector said no, they were only completed – it is the same finding that we are discussing on the SCA that we had trains that never moved when they have done 76 000 kilometres. So this thing is about, Chair, representation of facts.

CHAIRPERSON: Okay.

MR MONTANA: You know, if there is one person, Chair, finally, who cooperated with the Public Protector, it is me
10 and Chair I think that to prove that I have cooperated and that some of her issues and findings about information were really uncalled for. I asked for the record when I – before I – when I did the review application. Can you give me the record? The Public Protector could not even give me documents that I had given to her yet she makes findings about PRASA not keeping proper records and all of those things. But, Chair, for me, I will decide whether I want to take it or not.

The recommendation that Treasury runs a forensic
20 investigation, the forensic investigations have been done. I have seen and read the reports.

CHAIRPERSON: Yes but you have said you have got your review application.

MR MONTANA: I have got my review application, Chair.

CHAIRPERSON: Are you intending to pursue it?

MR MONTANA: Well, Chair, I will decide in the light of all of that and...

CHAIRPERSON: Ja.

MR MONTANA: A of – I think five years has intervened since that time, I need to ask myself what value I get in going to court and spending thousands of rands. But, Chair, I did challenge it and say it is wrong and factually I did put in those details, Chair.

CHAIRPERSON: Mr Soni?

10 **ADV VAS SONI SC:** As you please, Chair. Mr Montana, I need – and I say this with the utmost respect to you, you have criticised the judgments, the Swifambo matter, you have made allegations about all the judgments. You have criticised the judgment [indistinct – dropping voice] but this Commission, because it is, subject to the constitution, has to accept the findings of courts of law and until they are set aside on appeal those findings stand and in respect of the Public Protector you know that the Constitutional Court has said until a court has reviewed and set aside those
20 findings, those findings stand. I am placing this on record because I have heard everything you say, it is on record but in fairness to you I need to say that at the end of the day those are the submissions I will make to the Chairperson. I do not want to say it in your absence. We do not have to deal with it today, I have little doubt that

you will come back but I just placed that on record so you know what my approach to what you have said in respect of those judgments and this report.

MR MONTANA: No, no, Mr Soni, I respect I respect that, Chair. I am not going to challenge – you see, for me, I am also not here, Chair, to get a favourable response, I want to put the facts on record, the Commission will write its report but I think, for example, most of these things that do not have any basis whatsoever and that is why I came to
 10 deal with them. Once I have dealt with them in the Commission I do not need to go and spend money in a court and get what is it called, a hollow victory. I do not need to be cleared by anyone, Chair, I live my life, I do not need any court to clear me, I do not need to be cleared, I know the truth and this is the truth that I am sharing. But Mr Soni, I respect what you are saying, the Commission will have to do what it has got to do as long as it satisfied that factually those matters it deals with have got a sound foundation. My affidavit will show you that most of those,
 20 in fact they are not worth the paper that they are written on.

CHAIRPERSON: Yes, let us continue, Mr Soni.

ADV VAS SONI SC: As you please. Then, Mr Montana, you might remember in paragraph 72 and 73 Mr Molefe says that given the Public Protector's report he would have

expected support for the board's resignation. Now in the next section he deals with former President Zuma's attempt to intervene and you know what it is, it was intervene in your leaving PRASA. I will just read to you – I want to say this to you that there are parts of his affidavit which do not concern you because they happened between Ministers Radebe, Peters and President Zuma and Mr Molefe before you came on, so I am not going to put all those matters to you, I am just going to deal with – and I am not being
 10 selective, I am just saying that those are the matters you can deal with and I would like your comment on it.

MR MONTANA: Ja, sure.

ADV VAS SONI SC: So he says at paragraph 74:

“After the board that accepted Mr Montana's resignation he publicly announced that if the Minister and the board wanted him back he would be available to resume his responsibilities as CEO.”

Is that correct?

MR MONTANA: No, Chair. No, Chair, what is true is that
 20 I was addressing – we were launching the specifications for the new trains, not the specifications but – I think the specifications in Sandton. A journalist asked – at that time the relationship, Chair, had fallen apart and the journalist asked will you go to PRASA and I was blunt and say no, I actually – I think it was a point, if I remember

well, where I mentioned that I will not even go to PRASA with this current board as it is. And, Chair, there had been unions, there had been people who lobbied and say – even members of parliament who said we do not think that he should be leaving PRASA at this point in time.

So I have heard the testimony of Mr Molefe as well as the response by former Minister Dipuo Peters. No, Chair, but I think that is a recollection, I respect that, Chair, but I had no interest to go back, I had resigned out
10 of my volition, why would I want to go back to PRASA? I resigned.

ADV VAS SONI SC: But can I just ask you because it will come up again. Your state of mind at the time that you handed in your letter of resignation and then when the board accepted it with that letter that we have read with those conditions which you point out were really meaningless, in regard to your state of mind, you had determined you wanted nothing more to do with PRASA with this qualification, while Mr Molefe's board was in
20 place.

MR MONTANA: No, no, Chair, I think that let us put it properly for what it is. I was done, I had resigned, Chair, from PRASA, I explained the circumstances earlier on. I was done. A journalist asked me in the thing – I am not sure if my response was correct and that was later taken

by the board and I heard Minister Dipuo Peters saying maybe like he wanted to come back and all of those things. Chair, you know, I left PRASA in 2015, I have never been to any government office except always I state when I go to pay my municipal rates and taxes. I have never been to any minister's office to ask for deployment or favours because that is not me, I do not do things like that. I had left but there was war and this war was happening inside PRASA and outside of PRASA. And if you speak, for

10 example, to a number of unions they said look, we think you are leaving at this point, even March, and said I must accept publicly that I will not step down and all of those things and maybe when I dealt with that issue, I may not have put it outright but my state of mind was very clear, I am done, I am moving on, but I was concerned that PRASA, if it does not manage a transition, it is going to find itself in serious trouble and unfortunately, my worst fears, Chair, three years down the line were proven correct because the train system had collapsed effectively.

20 **ADV VAS SONI SC:** Okay. So I just want to be clear, your answer is, my state of mind was that I am not going to go back to PRASA.

MR MONTANA: At that stage I was very clear.

ADV VAS SONI SC: And it was unequivocal, in other words there was no doubt in your mind.

MR MONTANA: Chair, there was no doubt in my mind, but let us not forget, Chair, we live in a world of politics. I had wanted to leave, I had a dream that I wanted to create a property fund of some kind and get involved in that business but there were political pressures, parliament, within government, within political structures that we think a resignation is a mistake and – but maybe I may not have given them a very clear answer, so I am responding to you, making them believe that I was keen. And when I left, by
10 the way, on the 15 July, remember – and this will bring us to the meeting that [indistinct – dropping voice]. Chair, there is a procedure in the way companies deal with matters including preparing agendas and directors, including myself as an executive director, would be informed in – for example, when there is an issue that they had a board resolution on, the issue of me leaving on the 15 July was not on the agenda, was not discussed even with me, Chair, I happened to leave and let me – and this is what saddens me, Mr Soni, I got to a board meeting, we
20 discussed matters, we fight first about the Mthimkulu matter in the board. Then in the afternoon, Chair, before we finished the meeting I get a call from home, your uncle is sick, he is very ill, come home. I said no, I am in a board meeting, they said no, we do not think – it is very bad, you must come home.

So I then go to Mr Molefe, even though there was this war, but we could still speak as we continue to do to this very day, I said to him, Mr Molefe, ay, my uncle is not well, I need to rush home and then he says to me, no it is fine, when you leave, after we have dealt with the matters, there will be one issue on the agenda, which at that time was a standing item on the agenda, the contract of employment of the Group CEO and why it is on there, it is a standing item, it is because I have resigned and the
10 board and its governance committed even that it is minuted where they say like he must help us, must work with us so that we find a suitable CEO and all of those things.

As I was sitting in the meeting, I get the call that my uncle had passed on. I go back to Mr Molefe. Mr Molefe, it is too late now, my uncle is – I have got to run to hospital in Pretoria, the meeting is in Johannesburg. I run to Pretoria, do whatever I have to do in relation with the family. After 12 midnight I go back home, Chair, that is when I find a letter where the board says after you have
20 left, we – because we took a break and then after lunch they met and they say we took a decision that no - I was already two months into my notice period, Chair – we felt you should no longer service your notice period. That is what happened, Chair.

So that created a big fight because I then said but none of the board members, even you, that is the direction that you – but when I stood up and left the meeting, what was effectively, Chair, a cowardly act. A cowardly act, something that you view as a comrade and a leader - even if they have come to that determination, they would have waited, Chair, and said look, like he is got his own issues with the family, let me wait for him to come back after he has dealt with this and then we convey this thing to him.

10 So I come from home, my uncle's house, I go to the office. So these are the kind of people that you deal with, Chair. And when I took it up they said no, like he wants to remain a CEO of PRASA. No, Chair, I have resigned. Mr Molefe said we want you to stay for three years(?). I said no, I am going, I can only assist you. Two months into the notice period they say no, do not serve the other remaining four months, we will pay you being at home. Who would not want to be paid sitting at home doing nothing, Chair? So I was paid four months not doing anything at PRASA but

20 I left PRASA without doing a handover, Chair, and that is why you see the chaos because I was at the hub of the strategy, I put together everything about the modernization of PRASA.

So if I want to go back or did I want to go back? The big answer is no. But Chair, I think that the – if you

just imagine, you come back home, your uncle has just passed on and you expect people to be your own comrades and they do something so inhuman, so cruel.

So – but am I angry with him? No, I do not, but I thought in an African way, they would have dealt with it, but legally, the matter was not on the agenda. When I went to that meeting and when I left, I did not know that the matter of the contract of employment of the CEO was about discussing that we can – the board had the
 10 prerogative to take that decision that, hey, you have resigned, we want another person. But, Chair, then still you have to deal with it properly, not when you come and I leave the meeting and then they start to say no, he left to attend to his uncle, he should not come back. That is how cruel, Chair. That is the cruelty, that is the kind of – how people lose their own humanity because of power. They want to control this thing and they even forget that this man is grieving for his uncle. That is what happened, Chair.

20 **ADV VAS SONI SC:** Mr Montana, let us get back to the affidavit now because that does not concern – and I am not being unsympathetic.

MR MONTANA: Sure.

ADV VAS SONI SC: I can understand your anger, I just want us to stick in our lane, if I can put it that way.

MR MONTANA: Yes, Sir.

ADV VAS SONI SC: Right, then in paragraph 75 he says:

“Then quite unexpectedly in early August 2015, then President Zuma and Minister Radebe, who was then the minister in the presidency responsible for planning, monitoring and evaluation called a meeting at the presidential guesthouse in Pretoria.”

That is correct, is it not?

MR MONTANA: That is correct, Chair.

10 **ADV VAS SONI SC:** And then:

“Minister Peters was invited to the meeting along with Mr Montana and me.”

That is correct, is it not?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC:

“The meeting took place on the 20 August 2000.”

And that is correct, is it?

MR MONTANA: That is correct, ja.

ADV VAS SONI SC: “It was initially ...[intervenes]

20 **CHAIRPERSON:** Mr Soni, are you scared that if you summarised the gist of the matters or version relating to the meeting you might lose some important things?

ADV VAS SONI SC: Chairperson, this is an important issue.

CHAIRPERSON: Ja.

ADV VAS SONI SC: And my worry is that we gloss over something and then it comes back to haunt us.

CHAIRPERSON: Ja.

ADV VAS SONI SC: By the – it will not – I do not intend going over everything, Chairperson.

CHAIRPERSON: Yes, no, no, that is fine, that is fine.

ADV VAS SONI SC: So he says:

“It was initially meant to commence at three in the afternoon but it only started at six.”

10 Is that correct?

MR MONTANA: Well, Chair, I do not know the time if he was given but I was told the meeting would start at six.

ADV VAS SONI SC: Okay. Then in paragraph 76 he says:

“Just before the minister and I ...[intervenes]

CHAIRPERSON: Or maybe, Mr Soni, before you proceed. Briefly, Mr Montana, before Mr Soni proceeds, how did you come to know about the meeting? Were you invited? Who invited you? What time were you told the meeting would start?

20 **MR MONTANA:** Chair, I was invited by the office of Minister Jeff Radebe.

CHAIRPERSON: Yes.

MR MONTANA: The minister and the presidency.

CHAIRPERSON: Yes, okay, okay. And what did you – do you remember the time that you were told the meeting

would start?

MR MONTANA: No, it was six p.m. Chair.

CHAIRPERSON: It was 6 p.m. That is the time you were told.

MR MONTANA: I was there around quarter to six at the venue.

CHAIRPERSON: Oh, okay. How long ahead of the day of the meeting or time of the meeting were you invited. Do you remember? A day or two or a week or...?

10 **MR MONTANA:** No, Chair, I think it was a day or two, Chair.

CHAIRPERSON: About a day or two.

MR MONTANA: But, Chair, the meeting was meant in fact to take place in Cape Town.

CHAIRPERSON: Ja.

MR MONTANA: And I flew down to Cape Town. You must recall during – when this meeting took place, I had left PRASA, I was not longer in PRASA working for government. But I flew down to Cape Town. And the
20 meeting was cancelled. I came back – of course I complained that you cancelled the meeting, I am using my own personal resources and then the meeting of course that is described here took place in ...[intervenes]

CHAIRPERSON: In Pretoria.

MR MONTANA: In Pretoria. At Mahlabamba Ndlopfu, not at

the presidential guesthouse, Chair, as stated by Mr Molefe.

CHAIRPERSON: Oh, okay, alright.

ADV VAS SONI SC: So were you invited in writing or was it an oral communication to you?

MR MONTANA: Chair, I got the call – I think I got the call from the office of the minister, I do not remember receiving an email. I may be wrong, but I do not remember an email.

CHAIRPERSON: Ja.

ADV VAS SONI SC: And what did he tell you the purpose
10 of the meeting?

MR MONTANA: Chair, if you go back, when I left PRASA, I left on the 15th.

ADV VAS SONI SC: Of July.

MR MONTANA: Of July 2015.

CHAIRPERSON: And this was August.

MR MONTANA: This was August.

CHAIRPERSON: 22, I think.

ADV VAS SONI SC: The 20th.

MR MONTANA: Yes but the week – the circumstances of
20 my departure, Chair, there was a big fight in the media. There was a big fight in the media. Now I was meant to address a press conference to give my side of the story and everything. I got a call from Minister Dipuo Peters who asked me and say like we think you should not proceed with the press conference, we will have a meeting

within government, we will discuss this issue, we do not want this public space and everything. Then I rejected what the minister said. I said but, Minister, I have met with you on two occasions, I have raised the issues, now it is very important that I put my side of the story to the public.

So I went to – so before I started the press conference I then got a call from Minister Radebe who says he had a call from Minister Dipuo Peters and that I have rejected cancelling. So the minister spoke to me at great
 10 length and said look, we have a meeting in government to discuss what is happening around PRASA but we do not want ...[intervenes]

CHAIRPERSON: The minister who spoke to you at great length would be Minister Radebe?

MR MONTANA: Radebe.

CHAIRPERSON: Ja, okay.

MR MONTANA: Yes. So he spoke to me persuading me not to – I said look, I have a press conference, I have journalists there at the hired – packed, and I cannot just
 20 cancel. I then said look, it is fine, I will not go into the details, I will talk about other things in respect – I said I will respect what the leadership says and then at whatever time we have that meeting. So this meeting, Chair, is in fact – did not come out of the blue. PRASA itself had its own press conference planned, so mine was going to be on

Monday, the PRASA press conference was going to be on Tuesday. We were both ordered by government, both Minister Peters and Minister Radebe, to call off those press conferences and that this matter must be discussed internally. Even in this meeting – now I heard, Chair, that no out of the blue the President – no, Chair, there is a background to this meeting because the government and the President explained in that meeting we do not want, as the ANC, the public spat that is happening amongst
 10 yourselves as ANC, as ANC comrades, and that is basically what transpired, Chair.

CHAIRPERSON: Okay. No, that is fine.

ADV VAS SONI SC: Let us get back to ...[intervenes]

CHAIRPERSON: Mr Soni, we are at two minutes past seven. You have been on your feet for the whole day, you have been facing questions the whole day, we have been seated. I am quite happy to proceed for another hour but I am sensitive to particularly your situations. How do you feel, Mr Montana?

20 **MR MONTANA:** Well, Chair, I still have ...[intervenes]

CHAIRPERSON: You are still strong.

MR MONTANA: I still I have the energy but again I will be guided by you and...

CHAIRPERSON: Yes, yes. Okay, Mr Soni.

ADV VAS SONI SC: I do not mind, can continue, Chair.

CHAIRPERSON: You do not mind. Okay, let us go for another hour and see how it goes. Okay. Yes, Mr Soni?

ADV VAS SONI SC: Then at paragraph 76 Mr Molefe says:

“Just before the minister and I were called into the meeting room, I was informed by one of the security officials that Mr Montana and Mr Roy Moodley had just left the meeting room from the opposite side.”

Is – well, not did he receive the report but did you and Mr
10 Moodley meet President Zuma?

MR MONTANA: No, no, I do not know what that is all about. I have never met the President on that day, I never met Mr Moodley. I went to a meeting at the – I arrived at Mahlamba Ndlopfu at around five to – quarter to six and then I think the meeting started more or less at around that time. So I do not know which security official, I know nothing about that.

ADV VAS SONI SC: Alright. But certainly Mr Moodley was not at any meeting on that day that you went there.

20 **MR MONTANA:** I would not know, Chair, I would not know.

ADV VAS SONI SC: No, no, no, I am asking a different – you would know. If Mr Moodley was at a meeting you would know, I am asking at any meeting that you were.

MR MONTANA: No, on that day, Chair. No, not at all.

ADV VAS SONI SC: Now thereafter, from paragraph 76

onwards, Mr Molefe described what happened in your absence and we can leave that out. That is up to paragraph 86. That is on page 23. He says:

“They had various discussions about different matters.”

Then he says at paragraph 86, he says:

“I was shocked when the President said I have invited that boy Lucky Montana. He then asked Minister Radebe to call Montana into the meeting.”

10 Now of course you will not know what President Zuma said.

MR MONTANA: I would not know, Chair.

ADV VAS SONI SC: Yes. Yes but is it correct that Mr Radebe called you into the meeting?

MR MONTANA: Chair, my recollection of that meeting is that we started the meeting all of us at the same time. I did see Minister Peters in one of the waiting rooms there. We greeted and everything and then the meeting started when the President arrived which I think was about 15, 20 minutes later. I do not recall that but I do not know about
20 that experience, whether there was – I do not work – I was no longer in government, I did not have a right to ask who was here before, I just went to a meeting and I attended the meeting, Chair.

ADV VAS SONI SC: But you cannot dispute and I am just – so that we need not deal with it, you cannot dispute that

there was a meeting between Mr Radebe, Minister Peters, President Zuma and Mr Molefe before you were called into the meeting.

MR MONTANA: No, I do not know, Chair. Maybe the meeting was meant to start at three, I was meant to join at six, but I was only told be here at six and that is what I did, Chair.

ADV VAS SONI SC: You see ...[intervenes]

CHAIRPERSON: Sorry I think, Mr Montana, Mr Soni asked
10 you a question sometime earlier and I am not sure if I heard the answer, I want to ask the question again. What had you been told was the purpose of the meeting?

MR MONTANA: Chair, the meeting was told it is a follow up, you will recall I mentioned on that the ...[intervenes]

CHAIRPERSON: The press conference, yes, ja.

MR MONTANA: The press conference, we were told there will be an internal discussion and I was ...[intervenes]

CHAIRPERSON: Connected with the fights.

MR MONTANA: Connected with the public spats and
20 everything.

CHAIRPERSON: Public spats, oh.

MR MONTANA: That is – the meeting was all about, Chair, was about that, Chair.

CHAIRPERSON: Okay, no, that is fine. Okay, continue Mr Soni.

ADV VAS SONI SC: You of course would not know what Mr Molefe was told about the meeting and so on.

MR MONTANA: No, I would not know, Chair.

ADV VAS SONI SC: Or what Ms Peters had been told is the purpose of the meeting.

MR MONTANA: No, I would not know, Chair.

ADV VAS SONI SC: Now can I just ask you this. On what Mr Molefe is saying, they were already in the room when you were called in. Can you recall if that happened?

10 **MR MONTANA:** No, Chair, my recollection is that we were all there. I have seen Ministers Dipuo Peters in the thing but this was 2015, I may have – there may be a bit of detail that I may have missed but my recollection is that no, we started the meeting at six together. Now it could be – it is possible that they may have been there earlier and had the meeting, I was asked to join when I was thinking that I am coming – I am very important, I am coming to be part of this meeting, Chair.

ADV VAS SONI SC: Okay, so this is now what Mr Radebe
20 says happened at the meeting. I would just like you to confirm ...[intervenes]

MR MONTANA: Mr Molefe.

ADV VAS SONI SC: Oh, sorry, Mr Molefe says that it is – it is ten hours later, Chairperson, so I apologise for that.

CHAIRPERSON: Okay.

ADV VAS SONI SC: He says that:

“President Zuma said that while he was on a state visit to the People’s Republic he had read about the public spat between Montana and I and he said that it was embarrassing to the ANC especially since both Mr Montana and I were members of the ANC.”

Is that correct?

MR MONTANA: I think something to that effect, Chair, yes, that is correct.

10 **ADV VAS SONI SC:** He says that:

“Mr Zuma also said that Mr Montana was very knowledgeable about commuter rail transportation and he should not be lost to the country.”

Do you recall him saying that?

MR MONTANA: Ja, the President never said that, Chair.

ADV VAS SONI SC: Did not?

MR MONTANA: Not at all, Chair. In fact if I were to explain a bit, I know that the people said the President had asked everyone to speak at the meeting, starting with the
20 Minister, with the Chairman of the Board and then it was my turn to speak. Now when I started, Chair, to speak, I said look, I am not going to get – I do not want – I said, Mr President, these are my leaders, I do not want to go into details and find a respect dispute, the only thing I can do is to indicate what PRASA has done so that we can protect

what we have achieved as a country. And then
...[intervenes]

ADV VAS SONI SC: Sorry, Mr Montana, I just want us to
get through this and you can give your version.

MR MONTANA: Okay.

ADV VAS SONI SC: Otherwise we are going to be all over
the place.

MR MONTANA: No, fair enough. Thank you, Chair. The
President – so the point is, the President never said it in
10 fact there.

ADV VAS SONI SC: I understand that.

MR MONTANA: If there was one person who said it, it
was Mr Molefe telling the President that Mr Montana is
knowledgeable and that is why I wanted him to stay for
three years, not the President.

ADV VAS SONI SC: Oh, did he say that?

MR MONTANA: Mr Molefe, yes. Yes, it was in
...[intervenes]

ADV VAS SONI SC: At that meeting?

20 **MR MONTANA:** At that meeting, Chair.

ADV VAS SONI SC: Okay. So I am just going to say this
to you, you know because you have followed this, neither
Mr Molefe nor Minister Dipuo Peters recalls that it was Mr
Molefe who said it.

MR MONTANA: Ms Peters actually said he told the

President, Chair, I think on two – on the two days that she was there. The first one she said I told the President that Mr Montana is knowledgeable, he knows about transport and that the President could use him as an adviser in Africa or that I could use – I, as Dipuo Peters, the Minister, could use Mr Montana as my special adviser. Those are the words that she used here, Chair.

ADV VAS SONI SC: Ja, I am challenging ...[intervenes]

CHAIRPERSON: I think, if I am not mistaken, the
 10 occasion when she spoke along those lines, if I recall correctly, she said it was prior to that meeting, I do not know whether to say much earlier.

MR MONTANA: That is correct, Chair.

CHAIRPERSON: And my recollection is that as far as the meeting is concerned, he may have confirmed that Mr Zuma spoke along these lines, I am not sure.

ADV VAS SONI SC: Yes.

CHAIRPERSON: But I seem to think she was saying – he was connecting this statement by Mr Zuma to what she had
 20 told the President on an earlier occasion about people like you and others that she thought had skills that should not be lost to the country.

MR MONTANA: Chair, you are absolutely correct, I agree with that, that is what she said.

CHAIRPERSON: Yes.

MR MONTANA: What I am simply saying is that after I spoke – actually, I did not even finish what I was saying at the meeting when I was talking about PRASA, then the President stopped me in the middle of that discussion and he asked the minister is what Lucky is saying true? The minister confirmed that. Then the President looked at the Chair of the Board, Mr Molefe, and said Mr Molefe, is what Lucky saying – and Mr Molefe then made that statement, Chair, in that context and the President said – because he

10 was quite disappointed he said well, there is a war. Actually I think he may have used those words, but there is a war out there, we come to a meeting, we are told that PRASA is making this progress, we are told that this young man – he uses those words indeed, this young man is knowledgeable, he knows about transport, yet – so this is said in a meeting, but out there it is war. Chair, I think – and it is at that point that I remember both myself and Mr Molefe were asked to leave because the President wanted to have a conversation with his two ministers.

20 **ADV VAS SONI SC:** At paragraph 88, second sentence, Mr Molefe says that:

“President Zuma said we should sort out our differences and bring Mr Montana back as Group CEO.”

Did he say that?

MR MONTANA: No, that is not – the President never said such a thing, he never said that at all, it is incorrect, Chair.

ADV VAS SONI SC: Then at paragraph 89 he says:

“The President indicated that some senior members of the ANC were concerned that Mr Montana and I had been making unpleasant statements about and against each other in the media.”

Did he say that?

MR MONTANA: Chair, in his opening remarks of why, was
10 about the public spat and not about bringing Montana back to PRASA. The never President never [indistinct – dropping voice]

ADV VAS SONI SC: Then he says that he and Minister Peters had gone into the meeting not knowing what the agenda was but it appears that you had been briefed beforehand because you then proceeded to present a long report in which you attacked Minister Peters and him.

MR MONTANA: Chair, that is not correct. I mean, I would be disrespecting the President by attacking ministers and
20 the Chair of the Board. I mean, I - it is not done and Chair, I had there my notebook, so as they were speaking I prepared notes because I decided on my approach – and some of these ideas I came to write later about where PRASA is and all of those things but there was not such a thing, I never – there was – actually the meeting ended on

a very positive and a jovial note and then we left the ministers, the President and the ministers, we took leave and Mr Molefe and I then had a bit of discussion, we said our goodbyes. That was the end of the matter, Chair.

CHAIRPERSON: So one, are you saying that you and Mr Molefe left the meeting at the same time?

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Leaving it not on the basis that you would be called back, there would be some discussion and
10 you would be called back leaving completely for the evening?

MR MONTANA: Completely, totally, Chair, yes, it was done.

CHAIRPERSON: And because the President wanted to speak to the two ministers?

MR MONTANA: Indeed, Chair.

CHAIRPERSON: The meeting you said should have probably started around quarter past six, I think you said?

MR MONTANA: Indeed, Chair, around that time.

20 **CHAIRPERSON:** It was meant to be six o'clock but probably started at about quarter past six.

MR MONTANA: Ja, but I am not referring to the earlier meeting because I did not know about it, Chair.

CHAIRPERSON: Ja, no, no. No, no, I mean the one which you attended. Now on your recollection, how long

did this meeting take more or less?

MR MONTANA: Chair, it took a bit of time, four, five hours probably. It was late when we left there.

CHAIRPERSON: Because I think both Ms Dipuo Peters and Mr Molefe said, if I am not mistaken – certainly Mr Molefe said it was about two o'clock I think in the morning. Ms Peters, she might not have been certain but I think she spoke also of the meeting either having ended around that time or certainly after twelve.

10 **MR MONTANA:** Chair, I think at around twelve, I do not think it went to 2 a.m. No, Chair.

CHAIRPERSON: Yes, yes, yes, and you think when you – on your version when you and Mr Molefe left it would have been around what time? Or when you say twelve is it when you left?

MR MONTANA: When we left ja, I think probably it was just after – just after 11 Chair.

CHAIRPERSON: Oh.

MR MONTANA: But again the issues of time for a meeting
20 Chair, I cannot – I do not want to be firm about it, the meetings takes place, the times are, ja.

CHAIRPERSON: Ja, but what it means is that you can only talk about when you and Mr Molefe left the meeting you wouldn't know how long they remained after you left.

MR MONTANA: Indeed Chair.

CHAIRPERSON: Is that right? Okay so on your version about five hours ...[intervenes]

MR MONTANA: Ja, four or five hours ja.

CHAIRPERSON: Four or five hours, and I think both of them if I am not mistaken, that is Ms Dipuo Peters and Mr Molefe, said that you took most of the speaking time, I think the estimate is by one of them, I don't know if it was both, it was maybe about two hours.

ADV VAS SONI SC: Two hours that's right.

10 **CHAIRPERSON:** Two hours or so which maybe on reflection might not be most of the speaking time, maybe I am wrong to say that, but they said you took quite some time.

MR MONTANA: Chair that is not – this was interactive meeting, of course I was, I prepared a note because I am talking to my leaders, I cannot just – they are sitting there, they are making their views known, when I am given the opportunity I must be systematic, I am with the President and the Minister, so I jotted down points that I wanted to
20 raise in the course of that conversation.

Chair I wouldn't have spoken because – spoken that long, Minister Peters spoke for a while, then the President asked Chairman Comrade Popo what is your view on this issue and then there was a discussion for a while Chair and then the President says well let's hear the views from

the young man and then Chair that is when I made my point.

Chair I had a list of things that I wanted to raise about PRASA, but I have only spoken about five at that meeting if I remember well. That is when the President stopped me and say the PRASA you are describing and the award that we have does not correlate. He then wanted – he wanted to confirm from Minister Peters if what I was saying was true and correct. Minister Peters responded
 10 positively, the Chair then – the President asked Mr Molefe, who also confirmed Chair, and it is in that context that a statement that Mr Molefe says President Zuma stated that Mr Montana was very knowledgeable about transport, it was made by him, he even said inform the President that that is why he as Chairman he said I wanted Mr Montana to stay for another three years, and that is what actually I think it left the President puzzled. So you want him to stay for three years and then – but that doesn't correlate with the reality of that, and Chair that was the context of the
 20 discussion if I could recall very well Chair.

CHAIRPERSON: H'm, well Mr Molefe's version, which I think to a very large extent was corroborated by Ms Peters ...[intervenes]

ADV VAS SONI SC: ...[Indistinct]

CHAIRPERSON: Was that – was that one, I think Ms

Peters put it along the lines that your presentation, or whatever you said, made it clear or was consistent with somebody who wanted to come back, that you were talking about how knowledgeable you were with PRASA's business and so on and so on. I think, I may be mistaken, but I think Mr Molefe may have been more direct in terms of saying you wanted to go back to PRASA and his version was that – and the President was trying to get him to – that is Mr Molefe – get him to agree that you would be taken
10 back, but Mr Molefe said he was resisting that because as the Board they had taken the decision to accept your resignation and he said he went so far as the discussion between him and the President went as far as him saying to the President well President you will have to come and address the Board and when I questioned Mr Molefe what emerged was that he was saying well if the President wanted the Board to rescind its decision to accept your resignation you would have to come and talk to the Board, or the President was asking what the rationale was of the
20 Board's decision to accept your resignation.

It was along those lines, and I think Ms Peters was also along those lines, even though she might not have been emphatic, but you are saying, one, you never spoke on the basis that you wanted to go back, two, you say the President never talked about you being knowledgeable

...[intervenes]

MR MONTANA: Not.

CHAIRPERSON: ...in PRASA's business, it was Mr Molefe who said that?

MR MONTANA: It was Mr Molefe Chair in the three year story.

CHAIRPERSON: Yes, are you saying that Mr Molefe was in a way lamenting the fact that you had left, you had – even though they wanted you to stay for three years, is
10 that what you are saying or not really?

MR MONTANA: No Chair I think ...[intervenes]

CHAIRPERSON: Or he mentioned, he just mentioned it?

MR MONTANA: Chair the issue about the PRASA Board was never discussed even at that meeting. There was no issue, I think I know that Mr Molefe sometimes wants to present himself as a hero, and that he took on the President to say come, these are just afterthoughts Chair, there was never such a discussion. I don't know what is the views of Mr Radebe, Minister Radebe who had
20 convened the meeting, but that is not my recollection Chair, I never asked to go back to PRASA, at that time, today and even tomorrow Chair that I am very clear on.

CHAIRPERSON: And so on your version the discussion, was the discussion about the two sides, namely Mr Molefe and yourself, stopping the public spats.

MR MONTANA: Chair it was about that, the person who introduced the issues was my notes how I spoke, because I said what do I debate with my leaders, that was actually my introduction, I said Mr President these are my leaders, I respect them and so I decided to use this meeting as a way of giving a report, and then I highlighted – I then provided some of the key highlights, because I had left government Chair, I thought that would be it, but there was never at any point a discussion where the President chaired, the
 10 President would not, he has not spoken to me to ask me do you want to go back into that position, we never had that kind of a conversation.

So I mean I was surprised when I read the affidavit about what Mr Molefe but look it was a meeting in the middle of the night, I may be wrong, he may be right.

CHAIRPERSON: Okay.

MR MONTANA: But I never asked to go back, I never asked to – the President never asked for me to be there, the meeting was about – so I wanted – I couldn't discuss
 20 with them Chair, what will I discuss with them, except substantive issues and that is what I put on the table, which the President stopped to ask the others to confirm whether what I was saying was correct and that is my recollection Chair of the meeting.

CHAIRPERSON: Well was the substance or gist of what

you said, you say it was a report or a report back, was it about what you had done at PRASA, what the state of PRASA was when you left and what the challenges of PRASA were as you knew them when you left, was it along those lines?

MR MONTANA: Chair – it was along those lines Chair, but I started with the fact that I outlined a number of government policies, that had been adopted and key decisions going back to the National Rail, Passenger Rail
10 Plan in 2006, the Public Transport strategy adopted by Cabinet and say all these initiatives were aimed at giving effect to government – it was not somebody taking their own initiatives on the side, and then I went onto – so Chair the fact, so all in all I think that was the – that was the approach that I took for the meeting. Ja.

CHAIRPERSON: H'm, Mr Soni?

ADV VAS SONI SC: As you please Chair. So can I just – and I know it is five years ago, about how long did it – you speak for Mr Montana?

20 **MR MONTANA:** Chair I cannot recall, I don't even think I spoke for 30 minutes when the President stopped me. I think as I said from my points that I jotted down I think that the President stopped me, because he wanted to confirm what I am saying was true which is what then we reverted to, then at the end of the responses that's when he said

but I cannot understand, that's what he spoke about this wall, we are agreeing inside but this wall is there and the conversation continued. I never even had the opportunity to complete all the notes, all the points that I have jotted down to share with the meeting Chair.

ADV VAS SONI SC: Mr Montana can I ask you about a document called PRASA In Turmoil? That's a document which as I understand it you compiled around the 26th of July two thousand and ...[indistinct – dropping voice]

10 **MR MONTANA:** No, no Chair I noted there was a document in the Unions that was called PRASA in turmoil or PRASA's recent developments, something to that effect there, which was shared with me. I have heard Mr Molefe saying that the document was compiled by me. No that cannot be correct.

ADV VAS SONI SC: Okay, I just want you to be unequivocal about this. That document you're aware that there is a document called PRASA in Turmoil?

MR MONTANA: If I remember there was.

20 **ADV VAS SONI SC:** But you didn't compile it?

MR MONTANA: No, no Chair I didn't compile it, I note that the document was sent by the Unions, they were saying oh a whole range of situations that I shared with you yes.

ADV VAS SONI SC: Now I asked the question in this

context because Mr Molefe, and maybe I got that impression, seemed to suggest that to a large extent at the meeting you articulated what was contained in that document which he says you had compiled?

MR MONTANA: No Chair, I don't know what is the relationship, I don't know what his impressions were of me speaking. There were certain things that we know, that were very clear about us, and I think maybe that's the impression that he may have but no Chair I had notes
10 written on my black notebook and hopefully I will still be able to find it and share it with the Commission's evidence.

ADV VAS SONI SC: Can I then ask you this, on your version, and I am saying this because there is the Molefe version.

MR MONTANA: His version, indeed Chair.

ADV VAS SONI SC: On your version you and Mr Molefe left whilst the two ministers and the President continued the meeting, is that correct?

MR MONTANA: That is correct Chair.

20 **ADV VAS SONI SC:** Now Mr Molefe says that the meeting stopped because the President fell off to sleep. Is that correct?

MR MONTANA: That is correct Chair.

CHAIRPERSON: It is important to clarify this. You may be saying it is correct that what – it is correct that's what

Mr Molefe said, or you may be saying it is correct that the meeting ended when – because the President had fallen asleep?

MR MONTANA: No, no Chair, I think Chair ...[intervenes]

CHAIRPERSON: Which one is true?

MR MONTANA: No that the President dozed off during the conversation.

CHAIRPERSON: Okay.

MR MONTANA: And Chair I have heard what Mr Molefe
10 said but I think there is a context to it.

CHAIRPERSON: Ja.

MR MONTANA: Fortunately for me who knew a lot of people in the Presidency, I remember when I arrived and served with tea some of the guys there they were saying we are opposed to this meeting, you guys know that [speaking in vernacular] has taken medication and actually the time that this meeting was taking place that Ubaba is not well, so that in fact doctors because this chap was sharing with me that I know them, were saying at that time
20 half past six we have actually been given straight instructions for the President not to meet with people, that is when he is supposed to take medication and all of those things. Chair and the President did at some stage leave the meeting because of that and I think that the medication was taking effect as a result of that, so Chair but these are

State secrets that we should not be talking about in that way, but I think for me that was the context, but I have listened to how Mr Molefe was using that thing to say here is the President who then called the meeting and later on the President Chair continued with the discussion.

CHAIRPERSON: He came back?

MR MONTANA: He came back Chair as it were, so this thing about him falling asleep I knew it because PRASA colleagues said no but the President fell asleep, he doesn't
10 even know what happened. Chair that is not true, that is ...[intervenes]

CHAIRPERSON: Unless of course – unless of course they are talking about – he is talking about what happened after you had left but you say you left with him, Mr Molefe?

MR MONTANA: No, no I left with Mr Molefe Chair, we spoke on the passage, we parted ways, we went to our cars, and that was it Chair. What happened after – behind – both of us did not know.

CHAIRPERSON: Yes, because it is interesting because
20 both Ms Dipuo Peters and Mr Molefe spoke on the basis that everybody left at the same time, it was I think on Mr Molefe's version around two am, and when they left the President had dozed off and was sleeping, that is what both of them said. Am I correct Mr Soni?

ADV VAS SONI SC: That is how she put the context

correctly Chairperson, that is the one issue that both Mr Molefe and Minister Peters agreed on, that the meeting stopped because the President had dozed off, and they all left the meeting, leaving him alone.

CHAIRPERSON: None of them spoke – testified about any of the participants in the meeting having left earlier than others.

MR MONTANA: No, no Chair my, and maybe because I was the youngest of all of the people in the meeting so I
 10 think I should be given the benefit of the doubt on that one, because Chair I remember very well when I arrived I went to the reception room, I sat there, I was offered tea/coffee, that's what I had and then I spoke to one of the guys there, who had served me coffee and that's when he said hey but you guys why do you do this to Ubaba, you know that he is not well, it is the timeframe to take things, we are under orders but – and he said we hope this meeting will take an hour, will take only an hour, that's what he said to me Chair and that is what happened Chair
 20 so for me the following, the dozing off there is a context to the fact that here is someone who is taking medication and the meeting was not supposed to be, but it has been said in a very derogatory sense out there as if you know – and I think it is something that is not right.

CHAIRPERSON: Yes, Mr Soni?

ADV VAS SONI SC: I just want us to understand because I need to put to you the dozing off according to Mr Molefe came at the time when he said to the President, and I know you disagree with me, but I am putting it so that we understand where the differences are, when he said to the President well if you want Mr Montana back you must come and address me and the President was, as he puts it, didn't take kindly to that, but just soon after that he dozed off and everybody left. You say that that didn't happen at
10 all.

MR MONTANA: Not.

ADV VAS SONI SC: And there was no reference on your version to the Board rescinding the decision. Sorry you shake your head, does that mean no?

MR MONTANA: No Chair there was no such a discussion Chair.

ADV VAS SONI SC: Okay, and there was no discussion about the President being invited to address the Board?

MR MONTANA: No Chair.

20 **ADV VAS SONI SC:** Now when you – and you say you and Mr Molefe left, but the few minutes ...[indistinct] the President ...[indistinct]. What did you and Mr Molefe say to each other as you left?

MR MONTANA: It was just small talk, it was just small talk, nothing of substance really and then we parted ways.

ADV VAS SONI SC: I just now again want to understand each of your states of mind. You are in a state of war with each other, that is the purpose of the meeting as you recall, is that right?

MR MONTANA: That is right Chair.

ADV VAS SONI SC: Right, now this meeting takes place and you on your version it all ends well because you and Mr Molefe agree that you will not be attacking each other?

MR MONTANA: Yes Chair.

10 **ADV VAS SONI SC:** Was there any discussion ...[intervenes]

CHAIRPERSON: Was that a yes?

MR MONTANA: Yes that is a yes Chair, sorry.

ADV VAS SONI SC: Was there any discussion, I mean it looked like now maybe you didn't bury the hatchet but it looked like there was some less antagonism between you and Mr Molefe. Was there any discussion of how there could be a reproachment rather than simply a cessation of facility?

20 **MR MONTANA:** Chair that has never been my approach, you know in these positions in politics, even your enemy you walk with them, and I mean Mr Molefe will confirm this, I have met with him, bumped into him whether in a mall, at a funeral of ANC people, I always go to him, polite, greet him, even in the middle of this war Chair. It was a war but

we were not fighting each other physically, I will greet him and to this very day Chair I think he has treated me unfairly, I think that he was not frank with me, understandably angry, I know where Mr Molefe stands on issues, I know where he stands and I know that in this divide it is that side and that side. So I didn't want – I accepted the guidance we got, that this is bringing you know ANC into disrepute, you guys stop all of those things and life continues.

10 **ADV VAS SONI SC:** Did you stop attacking each other thereafter?

MR MONTANA: Chair the – you recall that what happened thereafter, there were all these court cases that were unfolding and I think in a way the war continued in the media because for example I think when we met in November, that's when the ...[indistinct] in 2017 I think there was this Yagela matter, so to a large extent the matters in the public space continued, so I don't think it was what you call the cessation of hostilities because I
20 usually don't sign those Chair, if you fight with me I fight with you forever but still greet you when we meet here.

CHAIRPERSON: At the meeting when the two of you left on your version, was there a formal pronouncement, maybe I shouldn't say formal I should say clear pronouncement of what the conclusion was, you had been invited to this

meeting to try and resolve the public space, was there a pronouncement articulated as to what the outcome of the meeting was?

MR MONTANA: No Chair.

CHAIRPERSON: There was on such?

MR MONTANA: There was probably with the Ministers, the President just said to us look I want to talk to my two Ministers and then we left, me and Mr Molefe so there was no such, I don't know whether it happened after we'd left,
10 but when we left the only thing that we knew was that look a public spat is not in the best interests of the country and the ANC and that was it.

CHAIRPERSON: H'm, but did you know that because you – that's what you were told at the end before you left the meeting, or that's what the two of you just understood?

MR MONTANA: No Chair after the President had opened the meeting and then Minister Radebe also spoke at the meeting in terms of what he has done, there was a lot of – it was a jovial meeting but at the same time you could see
20 that there was a ...[intervenes]

CHAIRPERSON: A jabbing?

MR MONTANA: A jabbing thing, for example ...[intervenes]

CHAIRPERSON: Not physically.

MR MONTANA: Not physically, for example Mr Molefe

accused Minister Radebe that no he is closer to me and –
 no in fact I think it was Minister Dipuo Peters that when
 she called me to cancel the press conference I refused but
 when Minister Radebe called me to cancel I then cancelled
 and then she was saying to the President but ...[indistinct]
 is only prepared to listen to – he is closer to Minister
 Radebe, he is only prepared to listen to the Minister. Then
 Minister Radebe in his response in a very jovial fashion
 said but I am much closer Mr President to Popo than to
 10 Lucky and he went on to explain at length some of the
 interactions that this is to I think Botswana ...[indistinct] all
 of those things were – so it was a political meeting Chair
 where you know somebody is a ...[indistinct] position,
 somebody moves his position and everything but still the –
 it was a cordial discussion and for me I was in a difficult
 position Chair, because despite the fact that I was unhappy
 with some of the things that happened I couldn't say it in
 that meeting because I am meeting with my seniors, not my
 own age group, I had to be respectful to the President and
 20 the Ministers so I had to be careful and that is why I jotted
 the note so that when I speak I am not all over the show,
 but I more pointed, I deliver the message that I wanted to
 give, and that's what happened Chair, so when we left, me
 and Mr Molefe, there was not a clear instruction
 ...[intervenes]

CHAIRPERSON: Outcome?

MR MONTANA: Outcome as it were, they remained to continue the discussion, and I never spoke to any of the Ministers or Mr Popo Molefe about that meeting, I just – life continued Chair.

CHAIRPERSON: H'm, it just seems a little strange to me that when the President, Minister Radebe maybe a minister, Dipuo Peters, prior to the meeting were very concerned about the so-called public spat which was
10 between yourself and Mr Molefe, that they should allow a situation where you leave the meeting before there is a clear outcome about this issue of the public spat. You ...[intervenes]

MR MONTANA: No Chair you are absolutely correct, except that we took it when the President made the opening remarks, because he said this has to stop, and so I think there was no debate about that, and that's when the composition happened Chair so there was no discussion but – there was no discussion further, I think that the
20 President made it very clear and I take it that all of us had accepted that the President has shown us the line and all of us have to accept that that is the way to go.

CHAIRPERSON: No that's fine. Mr Soni I don't know, I am aware that the Commission did ask Mr Radebe to provide an affidavit and give his version of the meeting

ADV VAS SONI SC: Yes.

CHAIRPERSON: But I don't know whether you have got it because it would be interesting to see what his version is compared to the two.

ADV VAS SONI SC: Chairperson I don't have it at hand.

CHAIRPERSON: But you know of it?

ADV VAS SONI SC: Yes, yes. And I will check it, I will check it up before the next time, that is one of the matters we will raise.

10 **CHAIRPERSON:** No that is fine.

ADV VAS SONI SC: Chairperson I just want to ask one further question in relation to this meeting.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Mr Montana if you look at paragraph 91 at the bottom of page 23 in the second sentence Mr Molefe says – well let's read the first sentence, he says you spoke disparagingly about the Board, he didn't respond, we know your answer to that was that that didn't happen, you didn't speak disparagingly.

20 **MR MONTANA:** Ja.

ADV VAS SONI SC: He says something that I would like you to react to, he says:

“As Mr Montana had threatened to litigate against the Board, although he never did follow through with this threat, I told the meeting that I would reply

in court should this threat to litigate materialise.”

Do you recall him saying that?

MR MONTANA: No, no Chair, this was not – I think Chair that I dealt with the issue at the press conference, where I said actually the Board’s decision, because it was procedurally, it was not done in a – a proper procedure has not been followed, I will take this on the thing, so in my press conference you recall that I was asked to cancel it but I didn’t cancel it because the media was already there,
10 but I didn’t go into the details of the issue and I made that statement Chair, so I think he is confusing the statement I made when I spoke to the media with what had never transpired at that meeting.

ADV VAS SONI SC: Can I just – I thought as you did, I would just like us to read this again, because he says as Mr Montana had threatened to litigate against the Board, he is not saying that the threat came at the meeting, as I read that and then he says although he never followed through so I don’t think there’s a confusion in his mind that
20 the threat was earlier. What though is there is no doubt in his mind that he told the meeting that he would reply in court should your threat to litigate materialise. I just want to know whether that issue was discussed ...[intervenes]

MR MONTANA: Not at all Chair, not at all, it was never discussed at that meeting.

ADV VAS SONI SC: And he didn't raise it?

MR MONTANA: No, no, not as far as I can recall.

ADV VAS SONI SC: So you understand he is not saying you made the threat at the meeting.

MR MONTANA: No, no but the matter was never discussed or raised Chair from my recollection of the meeting.

ADV VAS SONI SC: Chairperson the rest of Mr Molefe's affidavit doesn't deal with any matters concerning Mr
10 Montana so insofar as Mr Molefe's affidavit goes we have asked all the questions we want to, subject of course to the matters that are in abeyance, especially about the ...[intervenes]

CHAIRPERSON: Minister Radebe's affidavit.

ADV VAS SONI SC: Affidavit and also in relation to judgment.

CHAIRPERSON: Ja, okay no that is fine. I think we should stop at this stage, obviously we have not finished. Tuesday next week is available, there was a witness who
20 had been scheduled but had to change and some other date that would have been used by another witness that will be given to him, so how is your availability on Tuesday from the morning?

MR MONTANA: Well Chair if you remember I have been summoned to this meeting Chair.

CHAIRPERSON: But you would avail yourself?

MR MONTANA: No, no I will make myself available Chair, thank you.

CHAIRPERSON: Ja, okay Mr Soni are you okay?

ADV VAS SONI SC: Yes, yes Chair.

CHAIRPERSON: Okay let us adjourn your evidence then, further evidence to Tuesday. Let's start at half past nine, let's start at half past nine ja.

ADV VAS SONI SC: Chairperson if I can just give a
10 roadmap of what is still ...[indistinct – dropping voice]

CHAIRPERSON: Yes.

ADV VAS SONI SC: It will be and so Montana can prepare for these things, it will be Ms Ngoyi's affidavit, Ms Mzingwayo's affidavit and Mr Ollerman's report. Those are the matters.

CHAIRPERSON: Okay, that's fine. Thank you very much Mr Montana for your cooperation so that we could work right into the night, thank you Mr Soni and your team, thank you to the staff and the technicians, thank you to
20 everybody for all your cooperation, I know it is Friday evening and Mr Montana was saying earlier on it is Friday and for young people, so I am hoping that the young people in this room don't say hey you know these people who are not young anymore they forget that it is Friday, but I just want to thank everybody for all your cooperation to

assist the Commission to try and finalise everything.

ADV VAS SONI SC: Chairperson can I – I just wanted to finish on a bit of a positive note, in relation to Mr Montana's affidavit I have indicated to him that there may be a very expeditious way to ensure that his affidavit ...[indistinct – dropping voice] he has agreed to meet – yes and Bongani so that – Ms Msinga, so that we can – it probably won't be done by Tuesday but at least we would know quite soon how the matter can be brought forward.

10 **CHAIRPERSON:** Ja, well I think that if the spirit that characterised today's proceedings is anything to go by that issue is going to be sorted out at least, it is just not going to be a problem, and I think it just shows what happens when everybody has a constructive and positive approach and attitude to issues, so I have no doubt it is going to be sorted out, so thank you very much to everybody once again.

I must just announce for the benefit of the public that on Monday the Commission will be hearing the
20 evidence of the Speaker of Parliament, Speaker of the National Assembly as well as the Chairperson of the NCOP on the issue of Parliamentary oversight.

And then in the – that will be during the day in the evening Mr Mantashe will come back to finish his evidence representing the ANC.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 19 APRIL 2021