

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

11 MAY 2021

DAY 392



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Recording & Transcriptions

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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 11 MAY 2021

CHAIRPERSON: Good morning Mr Soni, good morning everybody.

ADV SONI SC: Morning Chairperson.

CHAIRPERSON: Good morning Mr Montana.

MR MONTANA: Good morning Chair.

CHAIRPERSON: Okay the oath you took yesterday will continue today Mr Montana – will continue to apply. Okay. Mr Soni.

- 10 **ADV SONI SC:** As you please Chairperson. Chairperson you will recall we adjourned yesterday after Mr Montana had made parts or had made the affidavit in the Siyangena matter available to us.

We just wanted to check if there is anything there that would affect the line of questioning for now obviously we will admit that document at the correct stage but for now may I proceed with where we left off on the questioning yesterday Chairperson?

MR MONTANA: Ja that is fine.

- 20 **ADV SONI SC:** And we will admit the relevant documents at the right time.

CHAIRPERSON: Ja. No that is fine. Mr Montana I am going to try and keep an eye maybe more than I have done before today to making sure that you – you are able to answer the question first even if you have some elaboration

but if the question is wide the answer starts with the reason is and then you can explain or if it is what or where then the place is this or the time was what. Okay let us start.

ADV SONI SC: As you please Chairperson. Mr Montana can I please again refer you to Bundle G and this is page 198. This you will recall is where the ...

CHAIRPERSON: This is PRASA Bundle G?

ADV SONI SC: PRASA Bundle G as you please Chairperson.

10 **CHAIRPERSON:** Ja. Ja.

ADV SONI SC: This is an annexure to Mr Loubser's affidavit it is SS16 and it is page 198 where Mr Van Der Walt was itemising the payments he made in respect of the Parkwood property. Page 198 Mr Montana.

CHAIRPERSON: The handwritten 198.

MR MONTANA: I got it.

ADV SONI SC: Alright so yesterday you will recall we were dealing with different sub-paragraphs of – paragraph 2.2 and we had gone up to 2.2.4 that is the amount of
20 R400 000.00 that was paid on the 24th of July 2014. You confirm that?

MR MONTANA: No Chair I note – I note there the – I know the statement.

ADV SONI SC: Okay I am ...

CHAIRPERSON: Yes.

ADV SONI SC: I am just a bit concerned when you say you note the statement. You see what I am putting to you is we have a letter from Mr Van Der Walt in which he says in respect of Parkwood property he made these various payments to you. Now are you simply saying you note it of do you say you received those payments either in your own bank account or he paid somebody whom you asked him to pay?

MR MONTANA: Chair I can only note I said yesterday it is
10 like Chair somebody giving me your statement and say answer the question. I do not know the details of the statement because it has got nothing to do with me.

So I can only note and I think let – I think that let us be fair I am – how am I expected to answer about the statement of somebody else? What we know here Chair is that I sold a property for R6.8 to Mr Van Der Walt and he – and I have confirmed that he paid me R6.8.

CHAIRPERSON: Ja.

MR MONTANA: Now that R6.8 did not even come into my
20 account.

CHAIRPERSON: Ja.

MR MONTANA: But it was paid in different ways.

CHAIRPERSON: Yes.

MR MONTANA: With my own instructions.

CHAIRPERSON: Yes.

MR MONTANA: Now what we have before us Chair.

CHAIRPERSON: Ja.

MR MONTANA: Not asking me about that. You know Chair I mean let us be fair I came here.

CHAIRPERSON: Ja.

MR MONTANA: When I came here I was told that I stole R36 million and brought properties. I am here. This story about R36 million has now gone away. Now I can only note I do not even know his – Mr Van Der Walt is responding to
10 his partners.

CHAIRPERSON: Ja.

MR MONTANA: Now...

CHAIRPERSON: No I think we can make progress what you have made what you have just said now is Mr Van Der Walt paid you R6.8 million – number 1.

2. If I understand you correctly none of – no part of that – no portion of that amount came directly into your bank account. Is that right?

MR MONTANA: Chair I think the large – the large bulk of
20 that.

CHAIRPERSON: Ja.

MR MONTANA: And that is why I say I do not have access to my own accounts.

CHAIRPERSON: Yes. Yes.

MR MONTANA: But the large bulk – so I remember two –

three specific payments that were made.

CHAIRPERSON: Yes.

MR MONTANA: The first was to the bank for R2 million.

CHAIRPERSON: Ja. Yes.

MR MONTANA: So it is not reflected here I so not see it.

CHAIRPERSON: Ja.

MR MONTANA: We do not even know from what account it was paid.

CHAIRPERSON: Yes, ja.

10 **MR MONTANA:** We know that I have asked him to pay R2 million.

CHAIRPERSON: Ja.

MR MONTANA: For deposit to Hurlingham.

CHAIRPERSON: Yes.

MR MONTANA: We do not see that in the statement.

CHAIRPERSON: Yes. Yes.

MR MONTANA: Then there is a third payment of R2.2

CHAIRPERSON: Yes.

20 **MR MONTANA:** And then – there are other payments that he said to me in an email that it is money that I owed to him.

CHAIRPERSON: Ja.

MR MONTANA: Which I think is in that annexure there.

CHAIRPERSON: Yes. Yes.

MR MONTANA: Now I think Chair the – so that I confirm.

CHAIRPERSON: Ja.

MR MONTANA: Now I look at the statement – this statement yesterday.

CHAIRPERSON: Ja

MR MONTANA: I did a quick calculation.

CHAIRPERSON: Ja.

MR MONTANA: The statement that I think it was 198 and earlier one – the longer one version.

CHAIRPERSON: Yes.

10 **MR MONTANA:** Now it has got transactions deposits of over R30 almost between 30 and 40 million they have got nothing to do with me.

CHAIRPERSON: Ja.

MR MONTANA: They have got to do with even other people.

CHAIRPERSON: Yes.

MR MONTANA: Are they here before the commission to explain? Now Chair I think it is really to ask me to ask me to answer questions.

20 **CHAIRPERSON:** No, no. I...

MR MONTANA: About somebody else statement.

CHAIRPERSON: No, no I think.

MR MONTANA: I can only note I do not know what you are saying.

CHAIRPERSON: I think I do not know what Mr Soni says –

I think that what you are saying is some of that amount of – part of that amount of R6.8 may have gone into your account.

MR MONTANA: That is correct Chair.

CHAIRPERSON: But the bulk of it on your instructions was paid in different amounts to different people or entities.

MR MONTANA: Yes for example Chair the first R2 million.

CHAIRPERSON: Yes.

MR MONTANA: It goes without saying actually that was not
10 even an instruction from me.

CHAIRPERSON: Ja. Ja.

MR MONTANA: It is the property that had to be transferred.

CHAIRPERSON: Yes.

MR MONTANA: The bond had to be cancelled in the bank.

CHAIRPERSON: Yes.

MR MONTANA: He has to pay that amount first.

CHAIRPERSON: Yes.

MR MONTANA: And so I – I agree with that Chair.

20 **CHAIRPERSON:** Ja.

MR MONTANA: Now I am saying if – if you say 110 came into your account sitting here.

CHAIRPERSON: Ja.

MR MONTANA: Not having my statements.

CHAIRPERSON: Ja.

MR MONTANA: Because my account was closed. That is why I requested the commission to – can we ask the bank to provide us that so that I can then compare and say that may have come into my account I confirm. So – so when I say I note because I cannot confirm or reject Chair.

CHAIRPERSON: You cannot admit or dispute.

MR MONTANA: Yes Chair.

CHAIRPERSON: Ja. Okay. Mr Soni.

ADV SONI SC: Well on that basis Mr Montana can I then –
10 we will accept what you say – you are saying that you note the various payments that Mr Van Der Walt reflects as having been paid in respect of the Parkwood property from 2.2.1 to 2.2.9.

MR MONTANA: That is correct Chair ja.

ADV SONI SC: Okay so we do not need to go into each statement.

MR MONTANA: Chair I do not think we should but part of the issue let me explain. When Mr Van Der Walt you will recall that when Mr Van Der Walt bought the property one of
20 the issues that we agreed on there were certain things that needed to be done at the house and we agreed that I even said to him those are not for my account.

If you want to restore new things you can do that. I can install them but they are for your account. Now as I am sitting here I am not able to even reconcile any of those

things.

CHAIRPERSON: Ja.

MR MONTANA: So – so I think the only thing that will help us is only if we get my statements to do that. And nothing is being put to me Chair about the flow of the R36 million. You know Chair I keep on repeating this point. The whole country knows that Montana stole R36 million and bought houses. I am here.

CHAIRPERSON: Ja.

10 **MR MONTANA:** I am being asked about somebody else account not about what I stole.

CHAIRPERSON: Ja.

MR MONTANA: I want to answer this commission on those.

CHAIRPERSON: No, no that is fine.

MR MONTANA: So I keep on making that point Chair because it is very important to me.

CHAIRPERSON: No, no that is fine Mr Montana. I think the only other issue that should be raised in regard to these amounts that are stated here at page 198 to 199 is that you
20 are able to remember I one, two or three – it is in respect of two or three or so payments that you have recollection of your instructions to Mr Van Der Walt as to what he should do. Like the Hurlingham property that some money should go there but you cannot remember all of them.

MR MONTANA: Chair I am – I am saying – actually I do not

want to come and say to the commission I do not remember.
That is not ...

CHAIRPERSON: Okay.

MR MONTANA: That is not the kind of answer.

CHAIRPERSON: Okay. Okay.

MR MONTANA: I am simply saying that for now.

CHAIRPERSON: ja.

MR MONTANA: We are dealing with two statements that do not belong to me.

10 **CHAIRPERSON:** Ja

MR MONTANA: Now Mr Van Der Walt and I Chair beyond – beyond this statement – beyond what has been put before me had a relationship on developments. There is monies that have exchanged. Now I do not even know what these relates to. Now in principle I would say to Mr Soni I am not denying that there could have – these payments would have been done or even paid to other people on my behalf because that is what I said to you.

CHAIRPERSON: Ja.

20 **MR MONTANA:** So Chair I am not – Mr Van Der Walt bought the property – I think earlier on you said R68 million not R6.8 million.

CHAIRPERSON: Oh R6.8 Okay.

MR MONTANA: I think Chair I do not want that amount ...

CHAIRPERSON: You might – you must have been thinking

from R36 million to R68 million.

MR MONTANA: Yes we – but I would have asked for more that you come back Chair.

CHAIRPERSON: No if I said R68 million sorry it is R6.8.

MR MONTANA: So plain as what I am saying to Mr Soni.

CHAIRPERSON: Ja.

MR MONTANA: I am saying that I am noting this. It is true he may be saying that.

CHAIRPERSON: Ja.

10 **MR MONTANA**: But I also realise that Mr Van Der Walt may also have made mistakes.

CHAIRPERSON: Ja.

MR MONTANA: When I look at these in my understanding of the thing and I think that he could – he may be including all of these.

CHAIRPERSON: Ja.

MR MONTANA: In relation to what he then told me as a – as an amount owing.

CHAIRPERSON: That he said you owed him.

20 **MR MONTANA**: That I owed to him.

CHAIRPERSON: Ja.

MR MONTANA: That is what he is saying. So I am not able to say that Chair.

CHAIRPERSON: No, no I think let us put it to bed if we can. As I understand it Mr Soni – Mr Montana says he notes

these amounts and what Mr Van Der Walt says about them. He is not in a position – he is not saying he is disputing them.

ADV SONI SC: Yes.

CHAIRPERSON: He – all he is saying is he and Mr Van Der Walt had a relationship in terms of which various transactions happened and not just the ones we are talking about. And in respect of this particular property he instructed Mr Van Der Walt to make payments out of his
10 R6.8 million not R68 million – out of the R6.8 million he gave him instructions as to where to pay what amount.

ADV SONI SC: Yes.

CHAIRPERSON: So – so I think ...

ADV SONI SC: Yes. We cannot take it further.

CHAIRPERSON: I think we can – ja we can take it from there.

ADV SONI SC: There is one – there are two issues that I want to raise with you in regard to the payments. If you look at page 199 you will see at paragraph 2.2.8 he says
20 that a payment was made of R2 million on the 20th of February 2015. Do you see that Mr Montana?

MR MONTANA: I see that.

ADV SONI SC: Okay now I want you to look at please page 191 of that bundle. Keep your hand on this page though look at page 199 of that bundle and you will see the fourth

last entry on that page. This is the Precise Trade bank account that he has given his partners.

MR MONTANA: What page – what page are you on? 191?

ADV SONI SC: 191.

MR MONTANA: Okay.

ADV SONI SC: You will see there that on the 20th of February 2015 in regard to that account there is a withdrawal of R2 million. That is the same day that he says he made payment in respect of the Parkwood property.

10 **MR MONTANA**: Yes and I think that he provides that the ERF number which is the property you are talking about.

ADV SONI SC: Yes.

MR MONTANA: Ja.

ADV SONI SC: Okay I just wanted to make that point.

MR MONTANA: So Chair I think that – that may suggest to me that that R2 million I mentioned earlier on which is the R2 million for the settlement of the – the cancellation of the bond.

ADV SONI SC: Ja. Of the Parkwood property?

20 **MR MONTANA**: Yes remember it was bonded for ...

ADV SONI SC: No, no I will just – just listen to the question please Mr Montana.

MR MONTANA: Okay.

CHAIRPERSON: Ja.

ADV SONI SC: Because I understood you to say – please

turn to page 190.

MR MONTANA: Ja.

ADV SONI SC: Now it is the previous page of that bank account.

MR MONTANA: Ja.

ADV SONI SC: You look at the first debit on that account on the 18th of June 2014.

MR MONTANA: Ja.

ADV SONI SC: That is the R2.25 million you said was in
10 respect of the deposit or the bond on that account.

CHAIRPERSON: He said may have been I think.

MR MONTANA: No, no but also Chair let me clarify. There are three main big item payments that were – that were made from the R6.8.

The first is the R2million because the – I am not talking about the dates. The R2 million is for the cancellation on the bond. Okay.

The second one is the – is the payment for the – sorry there is a R2 million for the payment of the bond.

20 **CHAIRPERSON:** Ja.

MR MONTANA: There is a R2 million deposit.

CHAIRPERSON: For the cancellation.

MR MONTANA: To Hurlingham and there is a R2.2 million rent to Waterkloof property. So those are the three payments that I spoke about.

CHAIRPERSON: But let us talk about this I just want to make sure that I – you are right. I think when you answered the question in relation to the R2.2 – R2.250 million which appears as a second or is it a third transaction on page 190 yesterday you may have answered in a more definitive way that it was for the bond. But I think later on you emphasised that you thought so but you were not definite.

MR MONTANA: No Chair let me...

CHAIRPERSON: Or are you definite?

10 **MR MONTANA:** No let me be definitive Chair.

CHAIRPERSON: Ja.

MR MONTANA: I am saying the three main items.

CHAIRPERSON: Ja.

MR MONTANA: That I can remember vividly.

CHAIRPERSON: Ja.

MR MONTANA: When the R6.8 – remember Chair when you look at my accounts at that time you will not even find the R6.8. That is because they went not in my account.

CHAIRPERSON: Ja.

20 **MR MONTANA:** Usually you will see that this side and that side.

CHAIRPERSON: Ja.

MR MONTANA: The reason why you do not see it is precisely it is for one thing because I then asked him so you settled the bond – the bond cancellation comes from that

amount. Because I am paying – I am settling the bond. The second issue relates – was a R2 million that was paid as deposit and I think Chair that the R2 million that is mentioned once not twice we do not know where the other R2 million is coming from. So there is a R2 million for the bond cancellation, there is a R2 million for the deposit to Hurlingham. So those are the two. And then there is a third payment which is basically pay for the ERF 161 Waterkloof which I mentioned in the – in my statements. So
 10 those three Chair are definite – I am saying definitely because that is what has been paid.

CHAIRPERSON: You are definite about those ja.

MR MONTANA: Exactly Chair so I can confirm that. Now that is why when I am asked about

CHAIRPERSON: The R2 250 million.

MR MONTANA: The payments – the other payments here that he – that Mr Van Der Walt shares with his – with – I think they may relate – may reflect payments that he could have made to me or other people.

20 **CHAIRPERSON:** On your instruction.

MR MONTANA: Which he then regard – which he then regard as a loan which he mentions R1.3 million. Okay or other things that we may have done together. But from the R6.8 the three large ticket items are those Chair bond cancellation which was R2 million. The deposit for

Hurlingham and as well as the payment for ERF 161 Waterkloof.

MR MONTANA: And those three payments almost exhausted R2.8 million, is that right?

ADV SONI SC: R6.8.

CHAIRPERSON: Because they each is about R2 million.

MR MONTANA: No they come to about – they come about R6.2.

ADV SONI SC: R6.8 Chairperson.

10 **MR MONTANA:** So there is about 5 / 600 000 left Chair.

CHAIRPERSON: It is about 5?

MR MONTANA: No they come to about R6.25 so there is about 600 – 600 left in the 00:20:03 Chair.

CHAIRPERSON: Okay. Okay. No that is fine. Mr Soni.

ADV SONI SC: Mr Montana I am just trying to understand and I know you are not answerable for what Mr Van Der Walt says. So to the extent that Mr Van Der Walt says to his partners as he does in 2.2 of his letter of the 28th of January that these various payments were made in respect
20 of the Parkwood property save for the one marked at 2.2.1 and the one marked at 2.2.8 you are saying that the rest are not in respect of the Parkwood property.

MR MONTANA: Chair – Chair I would – I would say that and I think that the probably what Mr Van Der Walt has done may have been to confuse – to conflate issues that are

there because I think they will have to align with annexure 162 or rather 160.

CHAIRPERSON: Ja.

MR MONTANA: We then have to then check the statement as to where the R1.3 he is talking about comes from and when I look at the statements not knowing them – they are not my statements I would assume that those amounts would reflect that.

CHAIRPERSON: Okay.

10 **MR MONTANA:** So I am not saying that they were not made but I am saying.

CHAIRPERSON: Yes.

MR MONTANA: So for me Chair the – that is why when people talk about my properties I say no, no, but I put my money.

CHAIRPERSON: Ja.

MR MONTANA: And that is a breakdown of that. That is why I keep on coming back where is the R36 million that Montana spent.

20 **CHAIRPERSON:** Yes.

MR MONTANA: On properties.

CHAIRPERSON: Ja. No that is fine. Mr Soni.

ADV SONI SC: Oh. Now I just want to go back and I know you are not answerable for this but this is information before the commission and we must in some way try and

reconcile all the facts that are before us.

If you look at after the R2 million he then says he –
at 2.2.9 on the 23rd of March 2015 he paid R439 200 ...

MR MONTANA: Sorry Mr Soni. Are you on 190 or 198?

ADV SONI SC: 199.

MR MONTANA: 199 Okay sorry, sorry about that. I just
wanted to make sure. 199 okay.

ADV SONI SC: Yes. He says he paid on the 23rd of March
an amount of R439 200.00. Now he is saying he paid that
10 in respect of the Parkwood property. Now when one looks
at the Precise Trade

MR MONTANA: Accounts.

ADV SONI SC: The transactional account.

MR MONTANA: Yes.

ADV SONI SC: One does not find that figure there. I am
just saying that so even on Mr Van Der Walt's version
unless he paid you from some other account in respect of
the Parkwood property he paid you R439 200.00 less.

MR MONTANA: No Chair if he is owing – if there is money
20 owing to me then (speaking in vernacular) Chair.

CHAIRPERSON: You will be quite happy to receive it.

MR MONTANA: I am in desperate need of money. So I
think – no but that is the point I am making. So I do not
even know Chair how Mr Van Der Walt was financing his
activities or what I can see here is that he has got a lot of

activities and monies going in and out of different people. Okay. For me I am interested firstly on the R6.8 because it tells me how I financed my participation in the other projects. So it is possible that he may have had another account. It is possible that he may have paid the other people that needed to be paid from the completely different account. And I think for me that is why I have a problem that I am dealing with statements that are not mine.

CHAIRPERSON: Ja.

10 **MR MONTANA:** But from what Mr Soni is doing to say we see what he is saying there but we see on the other side I do not have a problem Chair.

CHAIRPERSON: Ja.

MR MONTANA: The commission should do that yes.

CHAIRPERSON: Ja. No that is fine.

ADV SONI SC: Alright.

CHAIRPERSON: And of course when you talk about giving instructions for Mr Van Der Walt to pay as I see it here you – you accept that he was using Precise Trade to make
20 payments.

MR MONTANA: Chair Precise Trade was his company.

CHAIRPERSON: Yes it was his company. Ja. Ja.

MR MONTANA: He had now – now remember I am not part of Precise Trade.

CHAIRPERSON: Yes, ja.

MR MONTANA: The issue was that where we do developments together.

CHAIRPERSON: Ja

MR MONTANA: We then create joint ventures for that purpose.

CHAIRPERSON: Ja.

MR MONTANA: So that was the – that was the principle around that.

CHAIRPERSON: Ja

10 **MR MONTANA:** And – and I wish Chair the only thing that will help us Chair to understand and to confirm or to reject that it is only my statements are put here on the table Chair.

CHAIRPERSON: Yes.

MR MONTANA: And Chair I think it is not too late. I think the commission should try and get my statements so that we can – we can confirm so that I can say he did not come here or I had to then get my notes where I say page so and so, page so and so now I do not have those before me Chair to
20 be able to confirm that.

CHAIRPERSON: Well – well Mr Soni maybe I should say this. I do not know to – I do not know what difference it would make to see what is in Mr Montana's bank statements in this connection in the circumstances where his position is clear that that I sold the property to Mr Van Der Walt for

R6.8 million. Mr Van Der Walt paid that R6.8 million and part of it may have come into my account; part of it – different parts of it were paid by him on my instructions to different entities so – so it is not a situation where he denies that...

ADV SONI SC: No absolutely.

CHAIRPERSON: Those payments were on his instructions. So I do not know that it would make a difference.

ADV SONI SC: It will not. It will not Chair.

10 **MR MONTANA:** In fact Chair if you look at the letters where to – for the Hurlingham property and for the Waterkloof property he says but there he does it from not Precise. He was using a conveyance house which – which is the firm that he says we are holding this amount of money on behalf of Mr Montana. So he makes a commitment to pay a deposit for that – for that property.

CHAIRPERSON: Ja.

MR MONTANA: Now – Now Chair that is why it was very important and you can see people who went to this firm of
20 attorneys and collected information they – they jumped that point. They jumped the fact that he had written a letter but as a not as Precise this time but as a law firm that we have got R2 million for Mr Montana that will pay. So he is dealing – he is providing a guarantee. When he does the same in Waterkloof Chair and I think that one of the letters I

may even have – I may not have included – because I did not know that we are going to go this route you see it was – but now I see these letters confirm what he holds on my behalf from the sale of that – of that particular property.

Now – and that is why Oellerman is saying Mr Oellerman was saying Montana paid for this property but he did not have money. Because he will say that if he jumps an important letter Chair and that is why the importance of proper investigations. He jumped that letter that says – you
 10 will not know everybody moves from the premise that in Hurlingham I did not pay. I paid R2 million Chair from the proceeds of the sale. When my bank went to Pretoria for the second property and I see it has been tweeting about it yesterday he does not know that the proceeds of that payment comes from the sale of my – of my house. Why are they doing that Chair? Because they are not interested in that they are interested in another narrative that no, no Montana got money – got a kickback and paid for his property Chair.

20 **CHAIRPERSON:** Yes. Let – at least I think we are clear that...

ADV SONI SC: About the payment yes.

CHAIRPERSON: It might – ja – it is not necessary to go into Mr Montana's statement because of the position he has taken.

ADV SONI SC: Yes. Ja.

MR MONTANA: But Chair I am making a commitment.

CHAIRPERSON: Ja.

MR MONTANA: That if my statements.

CHAIRPERSON: Statements.

MR MONTANA: Statements become available.

CHAIRPERSON: Yes.

MR MONTANA: The commission wants to probe me.

CHAIRPERSON: Yes.

10 **MR MONTANA:** I will...

CHAIRPERSON: You are happy to do that.

MR MONTANA: I will come back Chair even if I come in my pajamas I will come and answer questions.

CHAIRPERSON: Yes. No that is fine. That is fine.

ADV SONI SC: Alright now Mr Montana we must get on I am afraid please. Can I ask you to turn now to Bundle H page 57.

CHAIRPERSON: That is the same bundle we are using or is it a different bundle?

20 **ADV SONI SC:** It is – sorry it is – so we were working in G with the bank accounts.

CHAIRPERSON: Is it the same that we have – oh we were using G.

ADV SONI SC: Yes now we looking at H.

CHAIRPERSON: Oh.

ADV SONI SC: This is Mr Oellermann's – the annexures to Mr Oellermann's report.

CHAIRPERSON: Okay.

MR MONTANA: What page, Mr Soni?

ADV VAS SONI SC: Page 57. Now you remember in respect of the offer to purchase which is PP-2 which appears at page 46. On the 5th of May you sold this property. We were at that yesterday. Now I just want to refer you to the addendum to the sale and it starts at
10 paragraph – page 57 of SA-16. It is a called an Addendum to Offer to Purchase and you agreed that this is the addendum to the sale of the property by yourself to Precise Trade, the property at Parkwood.

MR MONTANA: Chair, can I – I do not remember that I see it is signed by me, Chair. Let me just quickly remind myself.

CHAIRPERSON: [No audible reply]

MR MONTANA: I see that, Chair.

ADV VAS SONI SC: Okay. I just want to ...[intervenes]

20 **CHAIRPERSON:** Can I just raise this for the sake of clarity? Mr Montana, I know you have been saying you had a relationship with Mr Van der Walt. Just noting that, for example, this addendum and the purchase, is between yourself and Precise Trade as an entity.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Would it be more accurate to say your relationship was with Precise Trade as a legal entity? But of course, Mr Van der Walt was the sole director or shareholder and – because you were not selling the property to him in his personal capacity, you were selling to his company.

MR MONTANA: No, no I sold it to him in his personal capacity, Chair.

CHAIRPERSON: Oh, okay.

10 **MR MONTANA:** But he decided to use that as a vehicle.

CHAIRPERSON: Okay.

MR MONTANA: Now we do not know in other developments ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...what other vehicles would use if we had proceed with our relationship.

CHAIRPERSON: Yes, yes.

MR MONTANA: So Chair I think that the relationship was with him ...[intervenes]

20 **CHAIRPERSON:** With him.

MR MONTANA: ...personally.

CHAIRPERSON: Ja.

MR MONTANA: The fact that he decided to use Precise ...[intervenes]

CHAIRPERSON: Use a certain vehicle.

MR MONTANA: ...for that ...[intervenes]

CHAIRPERSON: Ja, okay.

MR MONTANA: ...it is his own decision ...[intervenes]

CHAIRPERSON: Okay.

MR MONTANA: Yes.

CHAIRPERSON: No, no that is fine.

MR MONTANA: Ja.

CHAIRPERSON: That is fine, that is fine, ja.

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

10 **CHAIRPERSON:** Of course, you would have no objection
if he used a certain vehicle as long as he was behind that
vehicle and you continued with – you achieved the
objectives of the relationship.

MR MONTANA: Chair, I think that if you look – let us use
the example of Hurlingham to answer ...[intervenes]

CHAIRPERSON: Ja, ja.

MR MONTANA: I put to media(?) and I said to him:
Would you partner with me? He said no. I will not have
the money to come into that relationship. And he
20 introduced me to some other people.

CHAIRPERSON: Ja.

MR MONTANA: And I entered into an agreement with
them.

CHAIRPERSON: Ja.

MR MONTANA: So it is the nature of the business, Chair.

CHAIRPERSON: Ja, ja, ja.

MR MONTANA: It is the nature, ja.

CHAIRPERSON: It would just depend on the business.

MR MONTANA: On the business and where money is, Chair.

CHAIRPERSON: Ja, ja.

MR MONTANA: Because – want to use. I mean, in my case, I have had a situation where the banks says: We cannot expand your facility. So that created a bit of a
10 problem for me. So that is what it is, Chair.,

CHAIRPERSON: Okay. No, that is fine. Ja. Mr Soni.

ADV VAS SONI SC: As you please, Chairperson. Now, Mr Montana, can I just ask you to look at page 58, paragraph 2.1 of the addendum?

MR MONTANA: Ja.

ADV VAS SONI SC: And that reflects – if I could just go through it very quickly. That says it would be your obligation as the seller to complete and install on the property the swimming pool, to be properly fitted, the
20 kitchen to be replaced, the construction on top of the garage to be completed, the tiling inside the house to be completed, renovations to bathrooms must be completed, and finalisation of security system. That is an obligation that – those are the obligations that were placed on your by virtue of this.

MR MONTANA: It is true except, Chair, that subsequent to our conversation, we have agreed because in some instances, when we wanted – I remember, for example the kitchen, he wanted me to install a different kind of – what do you call it – the ...[intervenes]

ADV VAS SONI SC: Appliances?

MR MONTANA: ...the appliances. So I think I wanted to put different ones. If I remember very well he wanted different ones. He said: Look, if you do not want that one
10 then we are going to put it on your account. So that is the kind of thing but largely these... For example, the pool, I remember I did the pool, Chair. So we did some of that work and I think that most of those were for my account, Chair.

ADV VAS SONI SC: Now, at 2.3 it says:

“The parties specifically agreed that all the above costs will be for the account of the seller...”

MR MONTANA: That is correct, Chair.

20 **ADV VAS SONI SC:** Okay. And then, of course, the one you referred to and I have already referred you to at paragraph 3.1 that **Mr Zamchlaka(?) [00:06:27]** was residing on the premises and you have explained to the Chairperson already the circumstances that you thought he would be in danger if he lived in town or ...[intervenes]

MR MONTANA: That is ...[intervenes]

ADV VAS SONI SC: [Indistinct]

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: And then there was to be payment of at least R 20 000,00 per month by Mr Zamchlaka for occupying the premises. Just – I just want – and please a yes or no – do you know where Mr Zamchlaka paid the rental as per this agreement?

MR MONTANA: Well, Chair, I think that – my understand
10 that he stayed there for long and he was paying for rental, ja. But whether he paid every month, I do not know Chair. I would not know.

ADV VAS SONI SC: And Mr Van der Walt never complained to you?

MR MONTANA: No, no. Not as far as I can recall.

ADV VAS SONI SC: Okay. I say that because of this. When one looks at the bank account, the transaction account, one does not see deposits of R 20 000,00. I am just pointing that out ...[intervenes]

20 **MR MONTANA:** Sure.

ADV VAS SONI SC: ...in case you want to comment.

MR MONTANA: Ja.

MR MONTANA: Okay but it is not a matter that concerns you.

ADV VAS SONI SC: Yes, Chair but you will recall,

Mr Soni, when he(?) is talking about the four-hundred-and-thirty-nine, it is reflected in his explanation but it is not showing in the statements which is possible that we do not – unless we have that contract between the two of them and to see which account was used. So it may suggest that he was not having one account, as it were, Chair. But again, it is not my story. I would not get involved in that.

MR MONTANA: Okay. Do not and please. Can I then ask you to – in regard to now what happened in regard to the
10 improvements? There are certain emails that start at page 60. And can I ask you to, please, first look at page 61 and that is an email from yourself. You will see right on the top dated the 10th of June sent about noon to Mr Van der Walt and you say:

“Dear Riaan.

Can I request that we pay from the proceeds of the sale of my house an amount of R 79 576,92 for interior work done for me.

The payment should be made to the following,

20 Team Austin(?)...”

You recall that?

ADV VAS SONI SC: I see that. I think it is my email. I think I can confirm that.

MR MONTANA: Okay. And then if you look at page 60, there is a response to you on the following – oh, sorry, at

three or four days later, is from Mr Riaan van der Walt. He says:

“Hi, Lucky.

Hope you are well.

Take note that I could not do the payment due to the bank account being invalid...”

I am just pointing out to you that this is among the documents that relate to the Parkwood property.

ADV VAS SONI SC: Thank you.

10 **MR MONTANA:** That is correct, alright?

ADV VAS SONI SC: [No audible reply]

MR MONTANA: Then can I ask you to please look at page 63 where, on the 30th of June 2014, you say to him:

“Dear Riaan...”

And in the second paragraph:

“I am under pressure to start paying the contractor for additional work and his own suppliers from the proceeds of the sale as well as start to realise the savings of my monthly

20 instalments of the bond...[intervenes]

CHAIRPERSON: I am sorry, Mr Soni. Are you at 63?

ADV VAS SONI SC: At page 63, yes. I am not reading the whole email ...[intervenes]

CHAIRPERSON: Oh.

ADV VAS SONI SC: ...as there is no ...[intervenes]

CHAIRPERSON: But at least tell us where you are starting from.

ADV VAS SONI SC: Oh, sorry, sorry, Chair.

CHAIRPERSON: I am getting lost where you are reading from.

ADV VAS SONI SC: Oh, sorry. It is the last sentence of the ...[intervenes]

CHAIRPERSON: ...of the – paragraph. Ja, okay.

ADV VAS SONI SC: Okay. Sorry, Chairperson.

10 **CHAIRPERSON:** Okay. Now I see, ja. Okay.

[Parties intervening each other – unclear.]

ADV VAS SONI SC: But you then ask him to make those payments.

CHAIRPERSON: Let me just – so there – that sentence says:

20 “I am under pressure to start paying the contractor for additional work and his own suppliers from the proceeds of the sale as well as start to realise the savings of my monthly instalments of the bond...”

Ja, okay alright. Continue.

ADV VAS SONI SC: And then you say:

“In the meantime, I request...”

This is the next paragraph.

“...I request you to make the following urgent

payments from the proceeds of the sale and we can reconcile the numbers when the property is finally registered...”

You did send that email ...[intervenes]

MR MONTANA: Yes, Chair, I confirm that, ja.

ADV VAS SONI SC: Okay and I just want to – we do not need to go into details. The amounts are in respect of the City of Johannesburg, R 150 000,00 and in respect of Simcindi ...[intervenes]

10 **MR MONTANA**: Simcindi Projects, ja.

ADV VAS SONI SC: ...Projects, R 350 000,00 and ...[intervenes]

CHAIRPERSON: Simcindi will be s-i-m-c-i-n-d-i. Simcindi Projects Company. That is for the transcribers. Yes?

ADV VAS SONI SC: R 350 000,00. And then in respect of a credit card from ABSA, which seems to be in your name, an amount of R 250 000,00 and then an invoice of R 110 000,00 with the reference TL Montana. You confirm you sent that email with that request ...[intervenes]

20 **MR MONTANA**: I confirm that, Chair.

ADV VAS SONI SC: Alright. Then can I ask you to turn to page 65, please?

MR MONTANA: [No audible reply]

ADV VAS SONI SC: And that is an email from a Jasper Nukwa, I think it is, where they say:

“Good morning, DCEO...”

It is addressed to you and it says:

“Attached are proposed designs for number
10...”

And that, obviously, is ...[intervenes]

MR MONTANA: [Indistinct]

ADV VAS SONI SC: ...in Newport(?).

MR MONTANA: Yes.

ADV VAS SONI SC: And you see the rest of the – the
10 following pages until page 71 are copies of the design that
are being sent to you. You confirm receiving that?

MR MONTANA: I confirm that, Chair.

ADV VAS SONI SC: Okay. And then if I can ask you to
please look at page 72 and that another email from
Mr Nukwa. This is on the 19th of August 2014 and the
subject – it is addressed to you. The subject matter is:
Newport master bedroom. And it says:

“DGCEO, the attached 3D’s are in fact part of
the set of what I forwarded to you on Friday
20 and again, I have contained drawings for 3D
drawings of the master bedrooms...”

Is that correct?

MR MONTANA: Ja.

ADV VAS SONI SC: Sorry, Mr Montana.

MR MONTANA: Ja.

ADV VAS SONI SC: I am not being difficult. It is just
...[intervenes]

MR MONTANA: Ja.

ADV VAS SONI SC: You need to reflect your answer
...[intervenes]

MR MONTANA: Ja.

ADV VAS SONI SC: [Indistinct]

MR MONTANA: I am sorry, sorry.

[Parties intervening each other – unclear]

10 **ADV VAS SONI SC:** And then can I ask you to look at
page 77. Again, this is – oh, sorry – this is now from
Mr Justin John. It is addressed to you. It is dated the
2nd of September 2014 and it deals with the Newport
master bedroom and the email reads:

“Good morning, Mr Montana.

Hope you are well.

I am still waiting to get approval and a deposit
to start the master bedroom...”

And then he says in the second paragraph:

20 “I have not yet received the balance of
R 165 000,00 for the kitchen.

It was supposed to be paid by the end of
July...”

Did you receive that email mister ...[intervenes]

MR MONTANA: Chair, I confirm that Chair.

ADV VAS SONI SC: Then can I ask you to please look at page 84?

MR MONTANA: [No audible reply]

ADV VAS SONI SC: This is ...[intervenes]

CHAIRPERSON: What page?

ADV VAS SONI SC: Page 84. Sorry.

CHAIRPERSON: Page 84. Okay.

ADV VAS SONI SC: This is an email from yourself dated the 21st of October 2014 to Mr Van der Walt and you say:

10

“Dear Riaan.

This invoice is for the design manufacturing installation of the modern kitchen units.

In addition, I have spent R 40 000,00 for the appliances as purchased from Miele in Johannesburg.

I will forward the invoices from Miele as well...”

And then you say:

“I trust you will find this in order...”

20

And the invoices you sent to him go up to page 94. Is that correct, Mr Montana?

MR MONTANA: So I see it starts from page 91.

ADV VAS SONI SC: Yes. Well, there are various other documents. You will see just interiors ...[intervenes]

MR MONTANA: But I thought this one was part of –

actually was part of the – what is it called?

ADV VAS SONI SC: Of page 84. These invoices for the design manufacture and so on.

MR MONTANA: From Just Interiors?

ADV VAS SONI SC: Yes.

MR MONTANA: Yes, Chair I see that.

ADV VAS SONI SC: Alright. Now just at page 94, the amount reflected towards the end is R 525 787.50. You see that? It is the third line from the bottom.

10 **MR MONTANA:** Yes, Chair but the pages – I see the numbers. I do not see the heading here.

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

MR MONTANA: From 91.

ADV VAS SONI SC: Yes.

MR MONTANA: What is it? Is it an annexure to Just Interiors? Because I see only numbers. There is no heading at all. I do not know what this is all about.

ADV VAS SONI SC: So, can I just ask you? You are not in any position to tell us what this is about?

20 **CHAIRPERSON:** Well, he is simply saying, Mr Soni, these pages from 91 onwards is just numbers. There is nothing to indicate what the numbers are about, what they relate to. He is asking whether it is an annexure to something or it is a standalone document.

ADV VAS SONI SC: Yes, it is the documents we have

uplifted from the Siyangena application.

CHAIRPERSON: But do we know what they represent?

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

CHAIRPERSON: Do you know what they represent?

ADV VAS SONI SC: We only – it would appear that they are part of or they were attached to the email at page 84.

CHAIRPERSON: H'm? But you are not sure about it, I guess?

ADV VAS SONI SC: I cannot take that further than this.

10 **CHAIRPERSON:** Yes.

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

CHAIRPERSON: Yes.

MR MONTANA: Chair, I do not know, Chair.

CHAIRPERSON: Ja.

MR MONTANA: I do not know what it means.

CHAIRPERSON: Ja.

MR MONTANA: There is actually the – if you look at Just Interiors, all the information – all the amount they mentioned in email.

20 **CHAIRPERSON:** H'm?

MR MONTANA: Now this numbers look different. I think they probably relate to something else.

CHAIRPERSON: H'm, h'm.

MR MONTANA: So I do not know Chair.

CHAIRPERSON: Ja.

MR MONTANA: I cannot deny or confirm, ja.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Alright. Can I then – can I just ask you to look at page 95? And I expect what you are saying ...[intervenes]

MR MONTANA: 95?

ADV VAS SONI SC: ...and it does not make sense to me as well. I was hoping you would be able to help.

MR MONTANA: Yes.

10 **ADV VAS SONI SC:** This then is an email you sent on the 21st of October to Mr Van der Walt in regard to now Miele appliances and you say to him. This is the ...[intervenes]

MR MONTANA: Appliances.

ADV VAS SONI SC: ...the Miele appliances.

MR MONTANA: Ja.

ADV VAS SONI SC: I paid for. And it looks like it is about R 40 000,00 for that.

MR MONTANA: Ja.

ADV VAS SONI SC: Okay.

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

CHAIRPERSON: I am sorry. Where do you see the amount Mr Soni?

ADV VAS SONI SC: [No audible reply]

CHAIRPERSON: I thought you said R 40 000,00.

ADV VAS SONI SC: Chairperson, I may have had it in my

head based on page 84 where Mr Montana says to Mr Van der Walt: I have spent over R 40 000,00 for the appliances purchase from Miele.

CHAIRPERSON: H'm. Okay. But at least the amount does not appear on ...[intervenes]

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

CHAIRPERSON: Ja.

ADV VAS SONI SC: No.

CHAIRPERSON: Okay.

10 [Parties intervening each other – unclear]

ADV VAS SONI SC: Now, Mr Montana... Oh, sorry Chairperson. Can I ask you to please look at page 97?

MR MONTANA: [No audible reply]

ADV VAS SONI SC: And you will see the amount right at the bottom. This is an – it is marked Miele Customer Order and the surname of the person who ordered it is said to be Mr Montana and you will see the total order value is R 40 448,00.

CHAIRPERSON: Yes, I see that, ja.

20 **ADV VAS SONI SC:** Once ...[intervenes]

CHAIRPERSON: So you think that is where you got the ...[intervenes]

ADV VAS SONI SC: This is where – and I just ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...was not ...[intervenes]

CHAIRPERSON: Ja, okay alright.

ADV VAS SONI SC: But it also ties in with that email ...[intervenes]

CHAIRPERSON: Yes, okay. No, that is alright.

ADV VAS SONI SC: Okay. Now, Mr Montana, I know it is a difficult exercise because these are emails you sent and received a long time ago.

MR MONTANA: Ja.

10 **ADV VAS SONI SC:** And some of them are not in order but leaving that aside. I just want to ask you a few questions about these emails. You said to Mr Van der Walt, and I have read your emails, please pay those amounts. Did he pay them?

MR MONTANA: Well, Chair, I think some of them. For example, the other one he said there is a bank problem. He did not pay. I see the one of Just Interiors, I think that it was not paid. And then there is the – I see the hundred and ten for the catering, Chair. I think it was paid. This
20 was for, if I remember well, there was a function of – a farewell function from one of the ...[intervenes]

ADV VAS SONI SC: No, no Mr Montana, I am just asking ...[intervenes]

MR MONTANA: Ja, I am confirming some of them Chair, yes.

CHAIRPERSON: Ja.

MR MONTANA: But I am not sure, Chair, if all of them had been paid but I can confirm some that I see ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...for example that I remember very clear.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: But Mr Van der Walt paid them?

MR MONTANA: Chair, remember that Mr Van der Walt
10 paid from the proceeds of the sale, ja.

ADV VAS SONI SC: Alright. Now ...[intervenes]

CHAIRPERSON: So I think that answer is. Yes, Mr Van der Walt but from the proceeds of the sale of the property.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Ja.

MR MONTANA: But if you look at that email that was read – Mr Soni read. It says paid from the proceeds. We will then reconcile what ...[intervenes]

CHAIRPERSON: Ja.

20 **MR MONTANA:** ...what the is due but it says paid from the proceeds of the sale, Chair.

CHAIRPERSON: Ja, okay.

MR MONTANA: Ja.

ADV VAS SONI SC: Now what issue that intrigues me. I read to you the various matters that the addendum required

you to attend to.

MR MONTANA: Ja.

ADV VAS SONI SC: It did not require you to attend to the bedroom. Can I ask you why you fitted – why you installed and made all those improvements to the bedroom when there was no obligation on you?

MR MONTANA: No, Chair, you see, the – it should not intrigue anyone. The relationship between myself and Mr Van der Walt was deeper than that and I think that – if
10 you look at the items, some of the items are not listed there but for example, I think we did not talk about – in the addendum we did not talk about materials but we had constant meetings before the property was transferred. Some of the things where he wanted changes on the property to say: No, no. Look, I think that we must change all of that but...

And I do not know, I need to check the dates very well, Chair, because I think some of them are not related. The – Mr Nukwa's designed thing was not related
20 to Mr Van der Walt. I think that we – if I remember well, we built for example a big wall. We wanted to change that and break into half, put wallpaper. So there was a lot of work Chair that was done. So I think that the – I think that those were the details – that was what was happening at that point in time, ja.

ADV VAS SONI SC: So Mr Montana, I am testing your state of mind now.

MR MONTANA: Ja. At the time or now?

ADV VAS SONI SC: No, no. At that time.

MR MONTANA: Yes.

ADV VAS SONI SC: We have a situation where you sell a house for R 6.8 million. You agree then after the sale, six weeks after the sale to do improvements to the house which the original sale agreement did not require you to.

10 That is correct, right?

MR MONTANA: Yes and no, Chair. The sale agreement did not require these thing but I am saying that there was constant interaction between myself and Mr Riaan van der Walt. If you look at, for example, the kitchen, like I explained earlier. He wanted, for example, certain things to be done there and that those were where I said: Well, if you want that it will be for your account. And so I think it was a more dynamic relationship, Chair, that we had with Mr Van der Walt.

20 Unless if you say that we were not – we did not strictly align with the – what is it call – with the offer to purchase. Probably did not, with hindsight, but I do not have a problem with that Chair. The nature of the relationship with Mr Van der Walt was such that we were working together on many properties and I said earlier on

that there were many transactions beyond even what we have here, Chair.

We are looking at a specific property and maybe – it does not fit in there but I think that what you can confirm, I think that was that we had the sale and some of this was paid from the proceeds of that sale, Chair.

CHAIRPERSON: And the answer, basically, to that question is. Yes, some of the things you did, you were not required by the sale agreement.

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

CHAIRPERSON: But you are simply relying on the nature of your relationship to say, you say – to say: Well, I did some of the things even though, strictly speaking, the sale agreement did not require them.

MR MONTANA: Indeed, Chair. So let us take one example. I said yesterday, when Mr Van der Walt took over the property in Waterkloof – I am giving that as an example. You will probably come to them.

CHAIRPERSON: H'm?

20 **MR MONTANA:** I said that some of the initial work were people that were mobilised by me, that I paid for them, okay? For them to come and do the break and all of those – all of – they were organised by me from Mamelodi. I paid these people, Chair.

CHAIRPERSON: H'm, h'm.

MR MONTANA: So that was the nature of the animal and
...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...it may intrigue someone but if you talk
about strictly that really – what is it called? This is
...[intervenes]

CHAIRPERSON: The sale, ja.

MR MONTANA: ...the sale and close up everything. Yes,
I mean, there is a – you will see it as a problem.

10 **CHAIRPERSON:** Ja.

MR MONTANA: But if you understand the nature of the
relationship and what we were involved in, Chair, you – I
do not think it should intrigue anyone.

CHAIRPERSON: Okay. Mr Soni.

ADV VAS SONI SC: Can I ask you to please look at page
49 of that bundle, the original sale agreement. I am going
to read paragraph 9.3 to you in light of what you have said.
Clause 9.3 of the agreement says:

“The parties hereto being Precise Trade...”

20 And yourself.

“...be agreed that this agreement constitutes the
entire agreement between them and that no
warranties or representations other than those
contained herein shall be binding on any of the
parties or their agents, nor are there any

suspensive conditions to this agreement which are not included herein. No variation, alternation or consensual cancellation of the agreement shall be of any force or effect unless reduced to writing and signed by both parties.”

Now I am just saying there is this clause. You are saying effectively that we went beyond the terms of the agreement, the strict terms specifically set out in 9.3. That is your answer to the questions I have asked. Would that

10 be right?

MR MONTANA: Chair ...[intervenes]

CHAIRPERSON: I think the answer is yes, Mr Montana.

MR MONTANA: No but, Chair, I think that the – I think you made a – it is yes, Chair.

CHAIRPERSON: Yes, yes.

MR MONTANA: But I want to explain something and the point is ...[intervenes]

CHAIRPERSON: I will tell you why I am saying that.

MR MONTANA: Yes.

20 **CHAIRPERSON:** It is because I think you have explained it before, I think twice actually.

MR MONTANA: Chair, if the point – I agree with you, Chair.

CHAIRPERSON: Ja, so ...[intervenes]

MR MONTANA: The point has come back, let me make it

quickly, before I forget it, Chair.

CHAIRPERSON: Ja.

MR MONTANA: You see, Chair, if there was a legal dispute between Mr Van der Walt and I, that clause was going to play an important role. There was none.

CHAIRPERSON: Yes but that is not what he is asking for. So that is why I say your answer is yes, we went beyond.

MR MONTANA: It is yes, Chair.

CHAIRPERSON: Ja.

10 **MR MONTANA:** But the point I was trying to make, Chair, I still need to make this point because I think it is very important. The State Capture Commission will not hold Montana and Van der Walt for not sticking strictly to that, Chair, unless if there is a dispute between the parties. Ja.

CHAIRPERSON: Yes, no, no, I do not think that – until Mr Soni makes another point.

MR MONTANA: Point, yes.

CHAIRPERSON: For now your answer is yes.

MR MONTANA: Is yes.

20 **CHAIRPERSON:** We went beyond what the sales agreement said.

ADV VAS SONI SC: But let me make that point, Mr Montana, and people may say well, here is an agreement which says a house is sold for R6,8 million, you will recall that the year earlier – Ursula Willis had said that the value

of the house was R3,5 million and ...[intervenes]

CHAIRPERSON: Just hang on one second, Mr Soni, the air con, if it can be adjusted, it is making it difficult to hear. I think they have had to make a plan.

ADV VAS SONI SC: As you please.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: One of the questions I must be expected to ask in these circumstances is this agreement then would protect people, you and Mr van der Walt in the
10 event of a dispute, or it could be the cover to say that this puts on paper something that is not the reality.

MR MONTANA: Chair, I am glad Mr Soni is actually coming back to his real intention. Okay, let start – we start with 36 million and I was asking deliberately, Chair. Now the first thing that we have is that before Mr Soni would make that statement, he will ask the first question, was there a house, was it sold, was it transferred and who - and this property, how was it acquired? Now I think from the factual position, Chair, you can see that the reason
20 why we paid and I think Mr Soni in his questions raises a number of things.

So, Chair, I think that even before I even answer Mr Soni, the facts of the matter speak for themselves and, you see, I say in my statement there has been this desperate attempt a whole range of things. Yesterday I said you are

guilty by association.

Now the house has been sold, Chair. Now if I sell – I may have different houses why I sell the house. The house that I sold was financed by ABSA and I provided – all my properties, I provided my bank statements. And that is why, Mr Soni, wanted us to deal with four properties and not all my properties precisely because it was aimed at denying the fact that there are proceeds from this which are mine, I am entitled to them because it is my property.

10 Once I pay the bank the rest of the money belongs to me, I can invest it as I wish.

So that is the first thing. And I think that if there was no sale, there was a sale created in the air, there was no actual sale. Now if the sale has happened, anybody can attach their own motive one, we cannot sell this property. It has happened, it is there, it is fair, I want somebody to say there was no such a property, a transaction. That is one thing.

The second thing, Chair, we are told about three

20 numbers. You will see that in one of the papers you say the valuation was 3.3. Well, Ursula Willis had said it is 3.5 in 2012, not when the property was sold, Chair. You will see that the email is very specific, we said that time we were discussing and he said if you dispose of that property – he mentioned two properties, Chair. The bank, Ursula

Willis from ABSA says if you dispose of that property we will want this x amount of money because we value it as this amount. If you dispose of another property, we will want this amount of money, here is the value. Okay?

Now a year or two later somebody says that property is not valued at that amount, they said - in some of the affidavits they said the property should have been sold for R4.8 million. Now surely you can see, Chair, all the stuff that Mr Soni has been taking through, all these
10 improvements that he says they fall outside number 9.3. If that work happened and we paid for those things, it in fact tell you that the enormous investment that has taken place in that property. Okay? Now it does not make sense when you say the bank four, five years ago says this property is R3.5 million and you list here all the work that has been done and the payments. I have just been asked about the payments. Actually, someone would be intrigued, Chair, in this time, it will be most intrigued that when you put money into a property you include the value of the property
20 tremendously and I think that if you look at the pictures of this property that I bought, I said the day before yesterday it was a complete wreck. Chair, it was a complete wreck, which we built – we actually had to rebuild. If this Commission had time it will go to the previous owners, I think the old man died but the daughters are there, they

will say take us there to that property. They will tell you that this is a completely new property that has been built.

So, Chair, I think, you know, I reject this statement with contempt and I know, Chair, let me tell you if I take further what Mr Soni is saying. You see, the surprise of yesterday was - yesterday was Monday, Chair, when we came here, the story of the R36 million hinge on a number of things. I said three things, Chair, when I was here yesterday.

10 The first one was that all of the properties that we are discussing are not my properties, they are Mr van der Walt's properties and seven of the properties are mine and I detailed each one of them, how they were paid for, which one I sold, how much money I have made out that. That is the first issue, Chair.

 Secondly, when the Commission made its assertions it did not actually but particularly with two of the properties they elevated, Hurlingham, they did not know that I put money, I paid the deposit for that amount. So the noise
20 was that Montana did not put any money and I thought that if we are assisting the Commission to get to the truth, when certain new facts emerged, like they emerged yesterday, surely that – I think that we should be able to also change our position to say now what happened after between myself and Riaan, Riaan van der Walt of Precise

Trade in respect of improvements and all of those things?
There are details, Chair, that are then material to the story that I sold the property and the answer is no, they are not material to me but the story that this agreement is false, I hope that the Commission will present me with a supporting evidence to say – and I know, Chair, I have said the story comes from – yesterday I explained, it is a Paul O’Sullivan story, it presents and said it in that way, the Commission has now elevated false evidence.

10 Paul O’Sullivan says in his affidavit Montana is engaged in all these properties because ...[intervenes]

CHAIRPERSON: Yes, but the short answer to Mr Soni’s question, your short answer is you are saying the facts are there was a property, that property was sold, that property was paid for and you have said that you gave instructions as to how certain payments should be made from the proceeds.

MR MONTANA: And, Chair – I agree, Chair, and also that I reject with the contempt the last statement where he says
20 other people may say this was a transaction for other things.

CHAIRPERSON: Ja.

MR MONTANA: Chair, I have never been presented with evidence here that suggests otherwise so let it be put before me and then we deal with it in that way. But I reject

it, Chair.

CHAIRPERSON: Mr Soni? Oh, I see it is – ja, let us take the tea break and let us resume at twenty to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV VAS SONI SC: As you please, Chairperson. Mr Montana, now I want to deal with the Waterkloof property
10 and I want you to please turn to page 105 of bundle H EXHIBIT SS18, 105.

CHAIRPERSON: Switch on your mic, Mr Montana.

MR MONTANA: Sorry, Chair. I am there, Mr Soni.

ADV VAS SONI SC: As you please. Mr Montana, this is an agreement that was entered into between Aanmani Guesthouse and Johan Smith as a trustee of the Minor Property Trust. Do you see that?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: Now the Minor Property Trust is a
20 trust you formed for the benefit of your children, is that correct?

MR MONTANA: That is correct.

ADV VAS SONI SC: And Mr Johan Smith is the trustee of the property trust.

MR MONTANA: That is correct.

ADV VAS SONI SC: That trust is still in existence, I take it?

MR MONTANA: Still in existence, Chair.

ADV VAS SONI SC: And Mr Smith still a trustee?

MR MONTANA: I think Mr Smith resigned but there were three trustees. It was him, someone else and my nephew.

ADV VAS SONI SC: And who are the present trustees?

MR MONTANA: I said there are two now, I was mean to appointed as a – after Mr Smith resigned. If I remember
10 well, I think it is Mr Johan Taljaard who works with Mr Smith and I think it is my nephew, Edwin Montana.

ADV VAS SONI SC: Now this agreement starting at page 105 is for the sale of the members' interest in the Aanmani Guesthouse CC. That is correct, is it not?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: Now this is – we have talked about the general properties and you dealt with it yesterday. This is the Waterkloof property.

MR MONTANA: That is correct, Chair.

20 **ADV VAS SONI SC:** This is at Rose Avenue.

MR MONTANA: That is correct.

ADV VAS SONI SC: Now can I just ask you to please look at clause 2 of the agreement which appears at page 106.

MR MONTANA: Ja.

ADV VAS SONI SC: And it says:

“The purchase price of the property amounts to R11 million and it will be paid as follows:

2.1 A deposit in the amount of R3,5 million.”

Is that correct?

MR MONTANA: That is correct.

ADV VAS SONI SC: And then that amount was to be nonrefundable and then at 2.4 it says:

“As security for the payment of the balance of the purchase price of R7,5 million the purchaser shall
10 be obliged to render approved bank guarantees.”

Is that correct, at 2.4?

MR MONTANA: I see that, Chair.

ADV VAS SONI SC: Now this agreement was signed on the 25 August 2014, is that correct. If you look at page 110 you will see that.

MR MONTANA: Chair, the agreement is – it is valid, so I cannot recall the exact date, I do not think it was signed by me, it was signed by Mr Smith, so I cannot recall the exact date, but yes, it was entered into between the
20 parties.

ADV VAS SONI SC: Alright, you do not know who signed on behalf of the purchaser, the signature is not familiar to you, if you look at page 110.

CHAIRPERSON: Ja, it does not appear to be Mr Montana’s one.

ADV VAS SONI SC: Certainly not, Chair.

MR MONTANA: Because I thought this was signed by Mr – it looks like Mr Smith's signature, I am not sure.

CHAIRPERSON: Well, the last part of the signature does look like TH.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: It does look like TH but did you know Mr Smith's signature? Did you know how he signs?

MR MONTANA: No, Chair, not really. Not really.

10 **CHAIRPERSON:** Okay, but obviously ...[intervenes]

MR MONTANA: But I think he should be the person who signed, Chair.

CHAIRPERSON: Ja. As far as your knowledge goes, he is the one who should have signed.

MR MONTANA: He should have signed, Chair.

CHAIRPERSON: Ja. Would you know the signatures of the other two trustees? Are you able to exclude them and say no, this [inaudible – speaking simultaneously]

MR MONTANA: No, Chair, they would not have signed
20 because I think for the Minor Property Trust Mr Smith was the authorised trustee on this transaction, Chair.

CHAIRPERSON: Okay. Okay, so would you say, as far as your are concerned, this should be his signature?

MR MONTANA: This should be his signature.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now, Mr Montana, can I then ask you to please look at bundle G page 199?

MR MONTANA: Okay.

ADV VAS SONI SC: Now you will recall that 2.1 of the agreement that was between the guesthouse and the Minor Property Trust, said that a deposit of R3,5 million had to be paid within 14 days from the signature.

MR MONTANA: Ja.

ADV VAS SONI SC: You accept that, Mr Montana?

10 **MR MONTANA:** I accept that, Chair.

ADV VAS SONI SC: Alright, now if you look at page 199 of bundle G, that again is a document we have been dealing with quite often, this is Mr Van der Walt's explanation to his partners about how the various payments were made.

MR MONTANA: Ja.

ADV VAS SONI SC: And at paragraph 4 where he deals with paragraph 6 of their letter to him and I will just say this to you, this relates to the Waterkloof property because that is what they had raised with him.

20 **MR MONTANA:** Ja.

ADV VAS SONI SC: He says in respect of that at page 4.1:

“The purchase price was R11 million.”

That ties in with the purchase price as reflected in the agreement, is that correct?

MR MONTANA: Ja.

ADV VAS SONI SC: And then he says at paragraph 4.2:

“The payment of the purchase price...”

At 4.2.1 he says:

“...on the 23 September 2014 an amount of R3,5 million was paid of the deposit.”

Now can I ask you ...[intervenes]

CHAIRPERSON: I am sorry, Mr Soni?

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** In my ears is sounded like you were saying 6,5. It is 3,5.

ADV VAS SONI SC: Oh, sorry.

CHAIRPERSON: It is 3,5.

ADV VAS SONI SC: It is 3,5, sorry.

CHAIRPERSON: Is that what you heard also, Mr Montana, or you did not hear that part?

MR MONTANA: No, I did not hear that part, Chair.

ADV VAS SONI SC: It is 3,5, Chairperson, I am sorry.

CHAIRPERSON: Ja, okay.

20 **ADV VAS SONI SC:** Now I would like you now to just on that same document, SS16, if you could go to – there is 190, that is the transactional account.

MR MONTANA: Ja.

ADV VAS SONI SC: If you look at the entry on the 23rd, there are two entries on the 23 September and the first

entry on the 23rd ...[intervenes]

MR MONTANA: Just hold on, Mr Soni, let me get there.

ADV VAS SONI SC: Oh, sorry, sorry.

MR MONTANA: You are on page 19..?

ADV VAS SONI SC: 190.

MR MONTANA: 190, okay.

ADV VAS SONI SC: Okay, so you will see there are, in the middle of the page, two entries on the 23 September. The first entry reflects a deposit of R3,5 million.

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

ADV VAS SONI SC: And Mr Van der Walt's handwriting it is said to be a TMM loan. Do you see that, Mr Montana?

MR MONTANA: I see that, I see two TMM loans.

ADV VAS SONI SC: Yes.

MR MONTANA: At the top and at the bottom, Chair.

ADV VAS SONI SC: Yes. Well, the top one we have been through already.

MR MONTANA: Ja.

20 **ADV VAS SONI SC:** Because those deposits preceded the R2,25 million guarantee paid in respect of the Parkwood Property. Now this is on the 23 September, a deposit of R3,5 million and then the next entry for the 23rd is a withdrawal of that exact amount, R3,5 million. Do you confirm that, Mr Montana?

MR MONTANA: So it is a withdrawal from this account?

ADV VAS SONI SC: Yes.

MR MONTANA: Okay, Chair.

ADV VAS SONI SC: And then you will see that the citation is given as Minor Property Trust loan.

MR MONTANA: Okay.

ADV VAS SONI SC: So he says at page 199, 4.2.1 that Precise Trade paid in respect of the Waterkloof property that amount on the 23rd and you will see it is reflected as – that payment is reflected in the transactional bundle. Do

10 you accept that, Mr Montana?

MR MONTANA: No, Chair.

ADV VAS SONI SC: You do not?

MR MONTANA: No. Chair, I think yesterday I explained Precise – what is it called, Minor Property Trust never paid for the property. When we were looking at buying the property and I think that I am glad that it is now called by its right name, it is a guesthouse, what do you call it?

Aanmani Guesthouse. So when the first offer that went to the bank, you will recall, Chair was – I mentioned

20 yesterday after the offer of R11 million was made, the bank said no, the value of the property was below that.

So we then agreed with Riaan that look, why then do we not then find – pay for the difference, the bank to pay – to give us the loan at the amount that they have given and there is a difference that has to be paid in that way and

therefore it was then agreed that no, what Precise would do, would then the property be registered in the name of Minor Property Trust but that transaction never went ahead, Precise Trade paid, Chair, and that is why when we could not get the finance from the bank, okay, the Precise Trade paid the 3.5 and the development is right there, so that is why Mr Riaan van der Walt bought the property and registered that in his name, Chair. So the property mentioned does not belong to Minor Property

10 Trust or to me, it belonged to Mr Riaan van der Walt, it is registered in the name of Precise Trade.

ADV VAS SONI SC: We are going to come to that, I am reflecting, Mr Montana, because Mrs de Beer deals with that in her statement which I am going to take you to in just a moment but I just want to say that – and please, you must appreciate that it is the duty of the Commission to look at all the evidence. We have the letter of Mr Van der Walt which says that in respect of the Waterkloof property he paid from this account R3,5 million, it is reflected in the

20 bank account, I am just putting that to you so that the Chairperson has the full record in front of him. Of course, with your explanation but let us put all the facts on the table first.

MR MONTANA: Chair, the facts are that Precise Trade paid the 3.5, it came from their account. Those are the

facts.

ADV VAS SONI SC: Okay. Now the next thing that – well, not the next thing but the more important development after that, as you have already pointed out, is that that agreement - after that, as you have already pointed out, is that that agreement came to nothing.

MR MONTANA: Yes.

ADV VAS SONI SC: And if I can ask you then to look at page 111 of bundle H. This now is an agreement entered
10 into between Aanmani Guesthouse and Precise Trade.

MR MONTANA: That is correct.

ADV VAS SONI SC: That is the agreement you were talking about, is that correct?

MR MONTANA: Yes, that is correct, Chair.

ADV VAS SONI SC: Okay, it starts at page 111 and you will see it goes up to page 116.

MR MONTANA: Ja.

ADV VAS SONI SC: Is that correct?

MR MONTANA: That is correct.

20 **ADV VAS SONI SC:** Now you will see the signature of the purchaser at the bottom. Would I be correct to say that that signature [inaudible – speaking simultaneously]

MR MONTANA: That is Van der Walt, indeed, ja.

ADV VAS SONI SC: Okay. Now that agreement is dated 28 February, is that correct?

MR MONTANA: I see that, Chair, ja.

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

MR MONTANA: Is that February, Chair, the way- I see 28th but that month, I do not know whether it is – does not look February to me.

CHAIRPERSON: What page are you, Mr Soni.

MR MONTANA: Page 116.

ADV VAS SONI SC: 116.

CHAIRPERSON: 116, okay.

10 **MR MONTANA:** The signature of Mr Van der Walt is there but then, Chair, the month, I am not sure, I do not think it is February.

CHAIRPERSON: Yes, there is no signature for the seller.

ADV VAS SONI SC: No, there is not a signature. Alright, perhaps Ms de Beer's affidavit will clear that up, we will just keep that in mind. Can we just move past that. I just want to ask you to look at page 112, reflects again the terms of the agreement, certainly in regard to price, it says:

20 "The purchase price amounts to R11 million."

And 2.1 then says:

"A deposit in the amount of R3,5 million which amount has already been paid."

MR MONTANA: Ja.

ADV VAS SONI SC: That is obviously the amount we

looked at from Precise Trade's account.

MR MONTANA: I agree, Chair.

ADV VAS SONI SC: And then it says the balance will be paid by way of guarantee. Now can I then ask you because Ms de Beer makes a statement about this, she has also given evidence and you have commented on her but she gives a commentary on how these various developments took place. I would just like to place that on record.

10 **MR MONTANA:** But where – can we go through to affidavit to look specifically on what she is saying, Chair?

ADV VAS SONI SC: Yes, yes. I want us to now look – the affidavit is page 121. I am not going to read everything, Mr Montana, I will just tell you where I am reading from. It is made by Ms Karen de Beer, her name appears in the first line of the affidavit itself and then she says in paragraph 2, the first sentence:

20 "I used to be the owner of the property situate at 225 Rose Street, Waterkloof, Pretoria, and I owned it through my company Aanmani Guesthouse."

Then she says:

"I decided in or about the end of 2012 to sell the property and I subsequently entered into a contract with a certain Lucky Montana to sell the property."

Then she says:

“I attach a copy of the contract.”

May I ask you to look at page 123? Does that document appear familiar to you, Mr Montana?

MR MONTANA: 123?

ADV VAS SONI SC: 123. This document is titled Deed of Sale of Members’ Interest and then it says Memorandum of an Agreement entered into between Karen de Beer and Mr Montana. Do you accept that?

MR MONTANA: I accept that, Chair.

10 **ADV VAS SONI SC:** That – if I can ask you to go to page 130. You will see the signatures of the contracting parties. In the middle of the page is Ms de Beer’s signature, that is the 10 February 2013 and then under that is the signature of the purchaser also on the 10 February 2011. That is your signature, is that correct?

MR MONTANA: That is correct.

ADV VAS SONI SC: Okay, so that is the agreement she refers to and then just because it is just part of the historical facts, you can go back to the affidavit, she says

20 ...[intervenes]

MR MONTANA: What page again is that?

ADV VAS SONI SC: Oh, sorry, page 121, Mr Montana. And then she says:

“Mr Montana was buying my interest in the property for the sum of R10,5 million.”

That was the price you and she had agreed upon. Is that correct, Mr Montana?

MR MONTANA: That is correct, yes.

ADV VAS SONI SC: Alright, then at paragraph 3 – the third line from the bottom, she says:

“The deal eventually fell through as there was one problem after another and Montana claimed the bank would not pay the bond which I did not believe as there was more than enough value. I
10 decided to withdraw the property from the market.”

Now getting her adverse comments about you, that deal did fall through, is that correct?

MR MONTANA: No, it did not work, Chair, but I think it was not because of problems – and that is why I want to see, Chair, the copy of the email from Ursula Willis from the bank. She refers to that:

“I attach a copy of an email sent out dated 11 March by Ursula Willis of ABSA Bank who gave the address for delivery of the approved building plans
20 as...”

I do not know, is it attached here, Chair?

ADV VAS SONI SC: It is not.

MR MONTANA: But I think it is very important, Chair.

ADV VAS SONI SC: It is not, Mr Montana

MR MONTANA: But why not?

ADV VAS SONI SC: Because we are not – we are dealing with a deal that did not go through, we are now dealing with the payment or the subsequent agreement in regard to the Minor Trust.

MR MONTANA: No but Chair ...[intervenes]

CHAIRPERSON: I am sorry, Mr Montana, what document are you talking about?

MR MONTANA: I am in page 121, Chair, the affidavit of Mrs de Beer.

10 **CHAIRPERSON:** De Beer, ja.

MR MONTANA: She says in paragraph 3, I attach a copy of an email sent out dated 11 March by Ursula Willis. Remember Ursula Willis was the lady who was dealing with my properties from ABSA?

CHAIRPERSON: Ja.

MR MONTANA: I think, Chair, it is also very important because...

CHAIRPERSON: Who gave the address for delivery.

MR MONTANA: Yes, I think that email is very important,
20 Chair.

CHAIRPERSON: Ja.

MR MONTANA: Because you remember the reason why that deal did not go through is very important and that is why I think it is very vital, it will tell you if I have applied to the bank through a facility and the bank says this

property is valued at 7.5, whatever the case may be. So there was that gap between the 10.5 and – okay? And that explains, Chair, why we then wanted to create a loan between the 7.5 and the what is it called, the 7.5 and the 10.5.

CHAIRPERSON: Yes.

MR MONTANA: Which was what was offered.

CHAIRPERSON: Yes.

MR MONTANA: So that email is material because if you
10 leave it out, Chair, it ...[intervenes]

CHAIRPERSON: Ja, no, no, no.

MR MONTANA: I think it is very vital.

CHAIRPERSON: I do not think you need to persuade me that if one leaves it out what the position is. If the affidavit says it attaches an annexure, that annexure should be there if it is available. If it is not available that is different because otherwise the affidavit is not complete if it refers to an annexure and the annexure is not there. Do you know, Mr Soni, whether Ms de Beer has got the
20 annexure somewhere, that email? Because she says in the affidavit I attach a copy of the email.

ADV VAS SONI SC: We, as I say, you will see, Chairperson, that on Ms de Beer's statement you will see there is a number 2911 right on the top right hand side.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: That we uplifted again from the documents in the Siyangena file.

CHAIRPERSON: Yes.

ADV VAS SONI SC: In the Siyangena court application.

CHAIRPERSON: Yes and the email was not there.

ADV VAS SONI SC: This is what I was given.

CHAIRPERSON: You do not know there – ja.

MR MONTANA: No, but Chair, but Chair, can I object to that? You see, I thought – you will recall yesterday I
10 mentioned the fact that various people were forced by Mr O'Sullivan to file particular statements, it was written – it was even written for them and they told them - it was from the Hawks. Now this affidavit, if Ms de Beer came and deposed to an affidavit to the Commission, it must be here with all the information.

CHAIRPERSON: Ja.

MR MONTANA: Now – and the reason why I am saying that, Chair, if you look at the entire paragraph ...[intervenes]

20 **CHAIRPERSON:** This was 2015, it was not deposed to the Commission, I think it must have been for other purposes.

MR MONTANA: Yes, Chair.

CHAIRPERSON: Ja.

MR MONTANA: But you can see that even the sworn

statement is a sworn statement rather than a fully-fledged affidavit that answers the questions of the Commission. You see – and that is what I am have been telling you to say the Commission cannot take documents from a particular matter if there is no proper context and in this particular regard, Chair, the reason why the deal did not happen is very important.

She gives her own view, she says there the deal eventually fell through as there was one problem after
10 another and Montana claimed the bank would not pay the bond, which I did not believe, and there was more than enough value, I decided to draw the property from the market.

Now, Chair, that is very important because it would then explain the other things that are there and I think, Chair, that we need – it is either this statement does not stand, it is not a complete – does not meet the requirements of the Commission because it is not good enough to be told that the statement, we have uplifted it.

20 Now Mr Soni yesterday was saying to me we are separate from the – we have got our own investigators separate from Werksmans' investigation.

This is Werksmans at play, Chair. Now I am answering questions on people who never interviewed me, who broke into my property, who fought with me and

[indistinct] must answer the statements that are there. But yesterday, Chair, I'm glad I put it on record, I insist, Chair, that this email - probably the Commission is in touch with Mrs de Beer so they can see that that – we cannot take only one part of what she said because it is material to what happens in this transaction after and the reason why we did not proceed with the transaction.

CHAIRPERSON: So you say that email will throw light.

MR MONTANA: Will throw light, Chair.

10 **CHAIRPERSON:** On the reasons why it did not proceed.

MR MONTANA: Exactly, Chair, because if we do not have it we are now going back to the realm of speculation.

CHAIRPERSON: Ja.

MR MONTANA: And particularly negative speculation where you will [indistinct] information, I think it must be here, Chair, so that we can have the proper conversation.

CHAIRPERSON: No, that is fine, I think at least attempts should be made to obtain it. Of course, if there are other annexures that she refers to, which are not there, those
20 should be – attempts should be made to obtain them. So I would imagine that at least if she is approached, that is Ms de Beer, she might be able to assist and I do not know whether from the court papers where it was uplifted it also did not have the annexure or whether what the position is but it seems that attempts should be made at least to get it. Mr

Soni?

ADV VAS SONI SC: May I make this suggestion?

CHAIRPERSON: Ja.

ADV VAS SONI SC: Mr Montana says it is important, I say it is not, but Ms de Beer is not the only one who knows or who was told why the deal fell through.

CHAIRPERSON: H'm.

ADV VAS SONI SC: Mr Montana knows that if he can give that evidence and we can move on.

10 **CHAIRPERSON:** H'm.

MR MONTANA: No, no, no Chair.

CHAIRPERSON: Ja.

MR MONTANA: Chair you remember why I am here?

CHAIRPERSON: Ja.

MR MONTANA: We are not leading Montana's evidence, I have given this Commission an affidavit with over 170 annexures and the staff that I am dealing with, with the bank, I am not dealing with a property, okay.

CHAIRPERSON: H'm.

20 **MR MONTANA:** The reason why this document is here Chair, you know why, because my deal with Ms de Beer did not work, okay. Then she enters into a transaction with Mr – with Precise Trade. Chair, you can see that when you analyse – and the last paragraph say, my disagreement, my fight with her, she mentioned different reasons and she

said that she believed that there was value in her property, okay, that's what she says. The bank doesn't agree what is the value there because if she thought the property was R7million and she agreed with the bank that the property was R7million, I would have probably bought the property, Chair, okay. Now, the bank says it's not, she rejects that, okay and so you can't withhold that information because what is happening if building up- but he's jumping up important facts which will assist the Commission to have
 10 the total picture of why the property is involved in the manner that it does.

CHAIRPERSON: Ja.

MR MONTANA: So, if we are playing reliance on this statement, it must provide a full information, Chair...[intervenes].

CHAIRPERSON: Ja, let's pause there, just remind me, Mr Soni, why is the reason why – why is the reason as to the transaction not being proceeded with so important for purposes of the Commission?

20 **ADV VAS SONI SC:** It's not important.

CHAIRPERSON: Oh, because if it's not important then we shouldn't be – we should not delay on it then. You know, I'm just simply – I'm simply raising that question because the absence of the Annexure has been raised by Mr Montana. If the reason why the deal was not proceeded

with is really not important, we should then be able to just proceed. If it is important, it may be that attempts should be made to okay it but if it's not important maybe that we should not...[intervenes].

ADV VAS SONI SC: We submitted Chair but Chairperson, as I said, we need to work out what the purpose of this evidence is. The purpose of this evidence, Chairperson is, to tie in with this deal the payments that Mr van der Walt said he made, the source of the funds for that R3.5million
 10 and that's TNM, we know and at the end of the day, what happens is, the deal falls through, the deal is then entered into, which Mr Montana concedes with the minor Trust, that comes after this deal falls through and that deal too, is replaced, as we've already seen by the deal between Precise Trade and the Guest House. So, that's simply what we want to put on record.

CHAIRPERSON: Yes, then, if that is so, it seems to me we can move on because the reason does not appear to be important for purposes of the Commission but if Mr
 20 Montana says it is important and then he can indicate to me why it is important, then we can take it from there, Mr Montana?

MR MONTANA: Chair, let me take you through a number of things.

CHAIRPERSON: H'm.

MR MONTANA: Firstly, let's deal with the procedure.

CHAIRPERSON: H'm.

MR MONTANA: Chair, it has taken me two years to be called before this Commission and I was told he didn't number, he didn't have this Annexure and everything, that's the first issue, so firstly this Commission must be fair and consistent.

CHAIRPERSON: H'm.

MR MONTANA: So, you admit documents that are being
10 used against me, this Commission admits, Chair, and those that refute – that challenges this Commission doesn't want to accept, that's the first issue Chair. So, I'm asking for fairness, that's number one.

CHAIRPERSON: H'm.

MR MONTANA: No, Chair, I still have two others Chair.

CHAIRPERSON: Maybe let's take one at a time.

MR MONTANA: At a time...

CHAIRPERSON: Ja, now, to the extent that you are talking about this Annexure, I agree with you that if there
20 is an Annexure to an affidavit, generally one should call for that Annexure okay but I go further, I say, there might be no need to go and look for the Annexure if it is not important for purposes of what we are doing, okay, that's why I asked Mr Soni why is the reason as to why the transaction was not proceeded with, important and he said,

it's not important and I said well, I will hear whether you say it's important – you already said it was important but I will hear why you say it is important but – so if I'm persuaded that it's important, I would attempts to be made to obtain the Annexure but if I'm not persuaded that it's important I might not say we should pursue that but I will hear what you have to say to that. So, as far as the Annexure is concerned, I agree that if an affidavit refers to an Annexure, generally speaking one should look for that
10 Annexure otherwise the affidavit is not complete, but one might say for what we are doing, this Annexure is important, but that Annexure is not important so let's not bother about the one that's not important but let's bother about the one that is important, so talk to me.

MR MONTANA: Chair, I always take your guidance where the Commission is paying reliance on this issue and I'm being led on evidence, it can't be selective because the Commission is here to search for the truth, to have the total picture we have to look at history in the round to be
20 able to form a picture. So, that is the first issue, Chair, and I'm saying that if you look at this affidavit that I'm led on now – and Mr Soni says, forget the ...[indistinct], if you look - you start with the whole affidavit you'll see for example that, she mentioned my people were contacted by...[indistinct -dropped voice]. Things like those don't –

didn't happen Chair, I don't want to go into that. I'm saying, the reason why the sale didn't go through is because the bank said certain things which she then said, I can't sell the deal, okay but that is a big issue Chair. Now, I'll tell you why this also is very important Chair. Mr Soni, for the past two days, he said to me, Mr Montana I need to be very fair to us, we are the Commission we are not Werksmans Investigation okay. Chair, we just dealt with Parkwood and I let it pass because I didn't want to be
10 petty. Now, base on what the documents, that were selected, elective, they're presented, and Mr Soni said at the end of – when we talk about Parkwood he said, I put it to you, not the facts, the facts don't support that. That some people may say – that is the word before you interrupted, Chair, because of the aircon or whatever. Some people may say, and he concluded it that the agreement for the sale of the Parkwood property and Mr Soni then relied on a number of documents. You asked a question and he said, those documents were picked up
20 from the Werksmans, what it's called, the PRASA / Siyangena matter okay. Now, those documents, Chair, were presented by Werksmans through an illegal process okay, that I regard as illegal, and I said, they can't be admissible.

The second issue Chair is that Mr Soni is

articulating, he did that at Parkwood, that's what Werksmans is saying in Court. He's repeating it, not from an independent investigation, Chair, by this Commission. He's taken their views, their positions and their documents and transplant it here okay and Chair, I was not even told, so that's what – it keeps on coming and he says something else. Let me tell me what Werksmans is saying and why we are on this path that Mr Soni is on. He said something very – I want to ask for a bit, I won't take long
10 but I want to present it to you so that you can understand. Those who have accused me, Chair, have said, Riaan van der Walt has got – Riaan van der Walt's firm, Loubser & Van Der Walt, as it was called at that time, I think now it's changed had money from Siyangena or rather from TNM which is a holding company of Siyangena. What did they place their reliance on, they placed their reliance, let's go to – I want to show it to you Chair, page – where we deal with the financial statements...[intervenes].

CHAIRPERSON: But and on Mr Montana, to the extent
20 that you're talking about the big picture of saying this is the narrative against you by Werksmans and so on and so on, that picture, I think I understand. At this stage, remember we are just talking about whether that attachment, that Annexure is why – the reason for the transaction not going through, why it is important.

MR MONTANA: Indeed Chair.

CHAIRPERSON: Ja.

MR MONTANA: But I'm not dealing with the bigger picture.

CHAIRPERSON: Ja.

MR MONTANA: I want to deal – he said other things Chair, and I want to go to that page...[intervenes].

CHAIRPERSON: But remember, at some stage we can deal with other things he has said but this particular
10 one...[intervenes].

MR MONTANA: No, Chair, this is actually related to this, I want to show you the picture and why, in fact, this shouldn't even be admissible, but I want to go to that page again Chair, is it 191 or – where we were dealing with the properties, I've...[intervenes].

CHAIRPERSON: Yes, but hang on Mr Montana, I think as far as the importance is concerned, you might be able to answer without even going to the paper. You say the reason why the transaction didn't go through was what the
20 bank said, is that right?

MR MONTANA: Chair, that's what the bank said.

CHAIRPERSON: Yes.

MR MONTANA: But Chair, I'm saying three things, Chair and I'm using this time to object.

CHAIRPERSON: Ja.

MR MONTANA: Okay, I'm saying that the – that affidavit or that Annexure of that affidavit from the bank, okay from the bank.

CHAIRPERSON: H'm.

MR MONTANA: It actually shows how I had intended to finance that property.

CHAIRPERSON: Yes.

MR MONTANA: But there was a disagreement in terms of the number, that's the first issue.

10 **CHAIRPERSON:** Yes.

MR MONTANA: So, it's very important and material.

CHAIRPERSON: Ja.

MR MONTANA: But Chair, I just want to use – because I let it slide before.

CHAIRPERSON: Ja.

MR MONTANA: I want to show two things, Chair, so that you can understand and there's an affidavit I want to refer to.

CHAIRPERSON: Yes.

20 **MR MONTANA:** On this specific matter.

CHAIRPERSON: Ja.

MR MONTANA: So, if you can be patient with me Chair.

CHAIRPERSON: Ja, okay.

MR MONTANA: Because I want to drive it now so that we can be...[intervenes].

CHAIRPERSON: Ja, okay, alright.

MR MONTANA: So that we can be – Chair so I've said that affidavit is very important, it's material to what...[intervenes].

CHAIRPERSON: The Annexure to the affidavit.

MR MONTANA: The Annexure, that's one, secondly, I'm saying that, today, unlike what I was told yesterday, I'm dealing with evidence that doesn't come from this Commission where the people were interviewed, deposed
10 to affidavits here. Now, there's a confirmation that, no these documents – so people that I'm fighting with I'm still coming to deal with, who actually have tried – who have run a very sophisticated intelligence campaign against me. Their documents are now the documents of the Commission. I was given assurance yesterday, that, no, no, no we are the Commission we are not Paul O'Sullivan, we are not Werksmans. Now, 24 hours later, it's very obvious Chair. Now, I think it shouldn't be admissible Chair that's a big issue especially after I've explained how
20 Mr Louis Green, how Mr – and Mrs De Beer were actually pressurising making these sworn statements, it was not even drafted by them Chair.

CHAIRPERSON: H'm.

MR MONTANA: The Commission cannot admit them, it must have their own statements, that's the second issue.

The third issue, Chair, my ...[indistinct], you know what they've done?

CHAIRPERSON: H'm.

MR MONTANA: Mr Soni knows, not only did this Commission – and we've dealt with the issue about the De Beer Commission or rather the Wagner affidavit Chair. There's another affidavit, this affidavit, it was deposed to by Siyangena, the CFO, Mr Soni, it's interesting that he read what the CFO of TNM/Siyangena said in court but he
10 didn't read the affidavit of Siyangena which is submitted here okay and Chair, I want to ask you quickly that I get that page because I want to demonstrate something very important Chair, what page is that Mr Soni of the statement is it 191 on the – when we were dealing with the properties Chair?

CHAIRPERSON: Ja, 191 ja.

MR MONTANA: 191.

CHAIRPERSON: Ja.

MR MONTANA: I think – let me show something Chair,
20 because ...[intervenes].

CHAIRPERSON: It must be the other file.

MR MONTANA: It must be the other file?

CHAIRPERSON: Ja.

MR MONTANA: Chair, okay, let me tell you what TNM and Siyangena they didn't only depose of an affidavit in the

court matter they deposed to an affidavit and submitted to the Commission. That affidavit the CFO says, you are talking about payments that we have made as TNM/Siyangena and I said, we have never made a single payment to Precise, okay. What did they rely on, Chair – and Mr Soni knows that okay.

CHAIRPERSON: Ja, it's page 190 to 191.

MR MONTANA: 192?

CHAIRPERSON: On – oh there is 192 as well on Bundle
10 G, PRASA Bundle G, yes?

MR MONTANA: You see, Chair, TNM/Siyangena deposed to an affidavit and says, we as TNM or Siyangena never paid a cent to Precise Trade, they say that there's an affidavit here, it's not been read, it's not been presented here and you know why, Chair, it's being withheld, because they have been trying to make the courts – and now Mr Soni's taking this narrative to here.

CHAIRPERSON: H'm.

MR MONTANA: I asked Mr van der Walt, he says, I asked
20 him, did Precise Trade receive money from TNM/Siyangena, he said, no and then we find that what they rely on are the notes that he has made. I asked him what account is this, he says, no, because I was managing many firms not from Precise but from the law firm I had – and I think Mr – the partner testified here that each partner

was in control of certain things. He said, these are my notes to show, for example, that I'm using that money against another money and all of those things, at Precise okay.

Now, the reason why Mr Soni withhold this vital information Chair, is because, like he did with the first one, where information was presented, he then wants to say...[intervenes].

CHAIRPERSON: Didn't they give you a copy of that
10 affidavit, the one you're saying they withheld?

MR MONTANA: No, they didn't Chair it was actually...[intervenes].

CHAIRPERSON: They didn't?

MR MONTANA: No, they didn't the Commission didn't.

CHAIRPERSON: Oh.

MR MONTANA: The Commission didn't Chair.

CHAIRPERSON: Ja.

MR MONTANA: And that is why, based on that statement, when I saw the statement, I asked the question and I said,
20 but there's a thing and I think that affidavit must come here, like this Annexure must come here and be read Chair, and you know what it means?

CHAIRPERSON: H'm.

MR MONTANA: It means other than the notes – because Riaan says, no, no, no I didn't receive money in my

rotating account I robbed Zondo to pay Montana and balance my books at the end and I wrote TNM loans, I wrote other things that are other notes okay it's not a deposit from TNM. He says, he just said, Chair, that the payment to Precise Trade, the R3.5million was paid for by TNM/Siyangena.

CHAIRPERSON: H'm.

MR MONTANA: Chair, I want to say that, that is false and I think that we must – in addition to that we must perhaps
 10 at the break, call that affidavit read it to what it is and then if there is any other evidence of payment other than the notes, let them read the accounts and see which accounts paid for this amount and they will prove – so Chair, this journey that I'm being taken on, on information taken from Werksmans to hang me, is made the position of the Commission and we are being led on a journey where vital evidence that disproves the narrative that has been presented here is being withheld deliberately Chair, and I'll never agree to that Chair...[intervenes].

20 **CHAIRPERSON:** Well, no, no, no, Mr Montana, well one, I don't believe that that affidavit would have been – would not have featured because we are not done yet, but Mr Soni will deal with that I don't believe that we were going to finish without it being dealt with...[intervenes].

MR MONTANA: No, Chair, all the documents on

properties are in these two files.

CHAIRPERSON: Ja.

MR MONTANA: And I was...[intervenes].

CHAIRPERSON: And it's not there?

MR MONTANA: It's not there.

CHAIRPERSON: Ja.

MR MONTANA: And it was not brought to my attention, Chair.

CHAIRPERSON: Yes.

10 **MR MONTANA:** Because I asked, and you know why I asked, Chair, is because there was a particular Tweet made last night and I then wanted to check, and I then discovered there was this particular issue. Now, I realise, so I said the first part, I don't want to fight it, let me see where we are going.

CHAIRPERSON: Ja.

MR MONTANA: But now Chair, I'm now dealing – I'm not at the Commission of Inquiry to State Capture I'm now – Werksmans didn't interview me, they put certain
20 statements in courts and the Commission is subjecting me, Chair, why must I agree to that, why must I sit here and answer the – he's just confirmed?

CHAIRPERSON: Hang on, I think too, with regard to the issue of the Annexure if attempts can be made to find it from Ms De Beer or whoever those attempts should be

made for purposes of Mr Montana but I note that, based on what Mr Soni has said about the reason or the importance of the reason for the deal not going through for purposes of the legal team, it's really not important but if you think it's important for your version, I think attempts must be made to find it. If it's found it's found if it's not found it's not found but attempts should be made.

MR MONTANA: But Chair, I support that first point.

CHAIRPERSON: Ja.

10 **MR MONTANA:** But what it tells you about all the documents that we have, I'm saying, Chair, I'm making – you've ruled on the first one, I'm happy with that Chair.

CHAIRPERSON: Ja.

MR MONTANA: But let's find it but we are finding an Annexure on documents that are not the Commission's documents, you asked Mr Soni here Chair, you said to him, Mr Soni do you know the relevance of this, he says, no we have uplifted them. Chair, I'm making now an application, maybe that's when I need my – now my legal team to be
20 here to draft an application that, all these documents that were uplifted from Werksmans that are not the Commission's documents, are not admissible Chair, to this Commission, unless if the people who made them, the Commission's legal team can make sure that they put together proper affidavits and they put them – or else,

Chair, I do not – I'll fight Werksmans as well but I don't want to fight within the Commission, Chair.

CHAIRPERSON: No, no let me explain this part, Mr Montana. It's critically important that the Commission does the best it can in investigating the issues that it is investigating that's point number one. Point number two, obviously it has to operate within such constraints as it might have including time and so on. Point number three, it is entitled, if it becomes aware, that somebody is in
10 possession of information or documents that may be relevant to what it is investigating it's entitled to or it may be obliged to obtain that information and look at it. So, I therefore, don't think that there would be a source of information where the Commission would say, oh if it comes from so and so we won't even look at it. I think that the approach should be, if it's relevant to what the Commission is investigating, let's have a look and then let's have a look, consider it on its merits. If we don't think much of it, we don't think it's helpful that's it. If we
20 think it's helpful let's have a look at it but of course there may be situations where somebody who wrote some document might have to be called and so on and so on. So, I just mentioned that so that you understand, indeed, the Commission has obtained information from various sources.

MR MONTANA: Chair, thank you for the assurance but I don't want to ask to put plaster over cracks on this issue.

CHAIRPERSON: H'm.

MR MONTANA: I respect, Chair, you are trying to move us forward.

CHAIRPERSON: Yes.

MR MONTANA: I said Chair, when the Commission – I said it yesterday, when the Commission went to collect documents from court which Mr Oellermann used for his
10 report, he left out my version, Chair and this is not because the Commission is coming to an end, this was done last year, Chair, that's the first issue. I'm happy the Commission looks at all the documents, including my documents Chair, including those, all of those – remember I quoted a statement that the Commission can never be the voice of the accusers it must balance and look at both the accused and the accusers, Chair. Now, in this particular instance, we've got very important things, so Chair, I agree fully with you, the documents that becomes available, the
20 Commission becomes aware that there are documents vital for the Commission to fulfil its role, I accept that Chair but here's a Commission Chair, despite your assurance, is doing the opposite of what you.[indistinct]. It's making out, it's sneaking in documents okay and leaving other documents out okay, for example, I forced that the affidavit

of Mr Wagner be read, Mr Soni says it's not important, I said, read it and you know what he tells you Chair, that affidavit you know what it tells us, it tells us that Mr Wagner who's got no relationship to PRASA entered into an agreement, he deposed to an affidavit, he said it's a good property development that we are looking at, all the documents were submitted yesterday and have been admitted, Chair, I forced that Chair. Now, here the Commission and the country is made to believe that, in fact

10 the R3.5million was paid for by TNM okay. TNM then put the statement to say, no, we didn't make such a payment and our bank never – and they asked this Commission I think, for the provision of that and you know it's kept out Chair, precisely because it is kept out. It then supports a narrative based, not on bank statements, based on handwritten notes of someone who says, I'm – and I think that there are many handwritten notes there beyond where he says, I'm paying this against that. Chair, that affidavit like the Annexure is material and it enables the

20 Commission to look at things in a round. Now, we are being – Mr Soni says...[intervenes].

CHAIRPERSON: Let me allow Mr Soni to ...[intervenes].

MR MONTANA: Let me make my last statement Chair.

CHAIRPERSON: H'm.

MR MONTANA: Mr Soni keeps – or the Commission

rather, so that I don't become personal, keeps that affidavit that says TNM/Siyangena didn't pay okay. Yet comes here Chair, being aware of that affidavit and makes the statement Chair and says TNM paid and what is that based on, it's not – we said follow the money but this one notes that Werksmans presented to say we believe that this money may be coming from TNM. Chair, today, we are all here, this Commission has got capacity let us put it on the table. Yesterday, you knew Chair, I asked you to say let's
 10 play the clip, I was not allowed.

CHAIRPERSON: H'm.

MR MONTANA: Let us put – where this R3.5million comes from, account wise and let us put the account of TNM and see the correlation because this – what is putting through to me Chair, is putting us to tell the country that TNM paid when it's actually false and the reason why it's an annexure, it is not put in there Chair it is actually to – it is supported by a particular narrative. I am insisting Chair that they put here in total we discuss the matter in full

20 **CHAIRPERSON:** No, no the affidavit – let me allow Mr Soni to respond to this.

ADV VAS SONI SC: Chairman let me first of all say the transactional account and the letters written by Mr van der Walt were revealed for the first time by the ...[indistinct – dropping voice]. Werksmans had nothing to do with it, they

conducted their investigations and they are not aware of. Mr Loubser came and gave evidence before the Commission indicating where they got this from and how the few ledgers from Mr van der Walt were obtained.

Now that was all contained in Mr Oellermann's affidavit. I just want to – because Mr Montana has kept making accusations against the Commission and especially the manner in which it has conducted itself, it is important Chairperson because at page 32, and I would like Mr
10 Montana to look at it so that he follows.

CHAIRPERSON: Which bundle?

ADV VAS SONI SC: Page – sorry, Bundle 8 Chairperson.

CHAIRPERSON: Bundle 8. While you are looking let me just say something Mr Montana about the statement you made that yesterday you asked for a clip to be played and you were not allowed, I am not sure that it is correct to say you were not allowed, but this is what I think happened ...[intervenes]

MR MONTANA: Chairperson sorry ...[intervenes]

20 **CHAIRPERSON:** I said Mr Soni at that stage his question related to what Mr Oellermann said or didn't say in his report and I said he was still going to come to the question of what he – what you say in your document he said too at the hearing, and I said if there was – if it is necessary we could look at that, so ...[intervenes]

MR MONTANA: I apologise Chair, I accept your summary is correct, that is what happened, thank you.

CHAIRPERSON: Ja, okay, alright. Bundle 8 what page Mr Soni?

ADV VAS SONI SC: Page 30 Chairperson.

MR MONTANA: Chair is it possible to ask for a quick comfort break.

CHAIRPERSON: Oh, we are three minutes ...[intervenes]

MR MONTANA: I am dancing here. Just for three
10 minutes.

CHAIRPERSON: Okay, let's take five minutes, ja, let's adjourn for five minutes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay Mr Soni.

ADV SONI SC: Chairperson I am just dealing now with the procedure adopted in relation to the allegations. At page 30 paragraph – oh sorry let us start at page 29. We – earlier we deal with Mr Montana who was served with a copy of the
20 report together with the annexures.

“And at page – paragraph 105 the – among the more important role players are Mr Van Der Walt who next to Montana or perhaps alongside him was the principle figure in the four transactions. Bank

statements of Precise Trade the vehicle through which the deals were facilitated for principally funded confirms Mr Van Der Walt's direct involvement in each transaction.

And the next paragraph what is missing are details of his relationship with Mr Montana nor does he provide an explanation of how the whole scheme was conceived and what the end gain was.

10 Then at paragraph 108 – oh sorry 107 we say: Another significant role player certainly in regard to providing finance is TMM. In this regard – in this regard the commission's investigators are aware of a contract between TMM and Mario Ferreira on the one hand and Mr Van Der Walt on the other. It is hoped Mr Loubser deals with this in his affidavit.

20 And then at page 109 we say: In addition Mr Van Der Walt refers to payment made towards some of the purchases by TMM. It appeared to be confirmed by entries made in Invest Trades Investment Bank account. Given the four properties it is submitted that there are serious questions

about Mr Ferreira's relationship with Mr Montana and his reasons for providing such huge sums to fund property transactions involving the CEO for Public Entity.

At page – paragraph 111: A copy of this report and other relevant documents will be emailed to Mr Ferreira with an initial invitation to deal with the matters concerning him, TMM and Siyangena.

10

And we deal with other role players.

Then at paragraph 115 it is said a number of question arise about Mr Montana. Monday 00:03:13 the following what was his relationship with Mr Van Der Walt? How was the whole scheme to sell his Parkwood property and purchase the other three properties conceived? How did he fund the purchases of the properties? Copy of this report and other relevant documents will be
20 emailed to Mr Montana with an initial invitation to him to deal with those and other relevant matters.

Plus the report will be sent to other persons mentioned again with an invitation to respond to its contents insofar as it

implicates them.

And then page – paragraph 117. A number of matters are raised in this report about the four property transactions. The persons mentioned who are in some way or the other either participated in the transactions or facilitated them have been invited to set out their versions.

Paragraph 119. After their responses
10 are received a further report will be compiled and submitted.”

Now Chairperson Mr Montana seems to refer to an affidavit by Siyangena. I do not have it in here but what I do recall and we are checking on that is after this report was filed on Siyangena they made an application to cross-examine Mr Oellerman. They said they then went to do forensic investigations in respect of the different matters.

They want to assist Mr Oellerman. To the best of my knowledge and again I say this has come as a surprise we
20 have not received anything from Siyangena beyond that application made in terms of 3.3 and 3.4.

The commission responded to that application. The purpose of that application as set out in their application was they did not want the hearing of the commission to effect the Siyangena hearings in the High Court. That is what the

stated purpose was. And that as I understand it in any case did not take place then it took place at a later date.

So I say all of this Chairperson because it is said we were selective. This report was served.

CHAIRPERSON: Sorry it is said...

ADV SONI SC: We are selective in the documents and what we submit. This report was served on Mr Montana in June last year. We have not received anything in writing from Mr Montana. That is why the 10.6's needed to be served on him
10 in relation in particular to this report. From TMM as I said to the best of my knowledge and if something had come up I would have been told about it. We have not received the so called forensic investigations they did if they did any.

They took a technical point Chairperson that the matter had been served on Mr Ferreira but not for – or had been served on Siyangena but not on TMM and so on. We responded to that in relation to the 3.4 situation.

CHAIRPERSON: So – so is the position that you are not aware of the affidavit that Mr Montana is talking about?

20 **ADV SONI SC:** Where there is a denial of this – well certainly since the forensic investigations are...here there is a denial of this – well certainly since the forensic investigations are...

CHAIRPERSON: Ja no Mr Montana says he is aware that the commission has in its possession an affidavit by

somebody from either TMM or Siyangena?

MR MONTANA: The CFO Chair. The CFO.

CHAIRPERSON: The CFO.

MR MONTANA: The CFO.

CHAIRPERSON: What is his name?

MR MONTANA: Tom – What is Tom's surname? I remember the surname Chair but he is the CFO of TMM.

CHAIRPERSON: Ja. It was the CFO of TMM.

MR MONTANA: Siyangena.

10 **CHAIRPERSON:** Okay. And in that affidavit you say he says TMM never paid any money.

MR MONTANA: Chair.

CHAIRPERSON: To Precise Trade connected with you.

MR MONTANA: And Riaan it confirmed the same Chair.

CHAIRPERSON: Ja.

MR MONTANA: And so – yes.

CHAIRPERSON: Okay let us – let us pause it there. So you are not aware of any such affidavit?

MR MONTANA: Chairperson I do not have the affidavit in
20 my head at the moment.

CHAIRPERSON: Yes, ja.

CHAIRPERSON: But I – the one I am aware of is that application.

CHAIRPERSON: Ja.

ADV SONI SC: There is an affidavit in support of the 3.3

application.

CHAIRPERSON: Ja. Do you know whether they dealt with that in that affidavit?

ADV SONI SC: I – I am just trying to get confirmation of that.

CHAIRPERSON: Because they – if they were seeking to leave to cross-examine anybody they would need to put up their version.

ADV SONI SC: Yes.

10 **CHAIRPERSON:** It may be that that is the affidavit that – that application you said it was for leave to cross-examine.

ADV SONI SC: To cross-examine Mr Oellerman.

CHAIRPERSON: Ja. What happened to it?

ADV SONI SC: Chairperson we submitted – when I say we the commission submitted an answering affidavit in that regard.

CHAIRPERSON: The legal team.

ADV SONI SC: Yes.

CHAIRPERSON: Yes. Okay. But beyond that you...

20 **ADV SONI SC:** I am not too sure.

CHAIRPERSON: You mentioned also that the – there was – they wanted to say the commission should not hear certain evidence prior to the High Court hearing.

ADV SONI SC: That is – they did not want Mr Oellermann's report to be presented to the commission.

CHAIRPERSON: Ja before?

ADV SONI SC: That was part of it yes.

CHAIRPERSON: Yes. Well if – if you could refresh your memory on that application so that one can see whether it was decided on or not decided or whether certain issues were raised.

ADV SONI SC: Yes.

CHAIRPERSON: I – I do seem to recall that there was some application but I cannot remember – are there – there have
10 been so – there are so many applications that one has dealt with I cannot remember each one – I cannot remember what the position is but I would like to – to know whether a decision was made on it or not – not yet or whatever.

ADV SONI SC: Yes.

CHAIRPERSON: Okay. Do you have a copy of that affidavit?

MR MONTANA: No not with me Chair.

CHAIRPERSON: You do not have.

MR MONTANA: Not with me Chair.

20 **CHAIRPERSON:** Okay. Mr Soni has it attempts will be made to try and establish if there is such an affidavit. Well certainly the application one.

ADV SONI SC: Yes.

CHAIRPERSON: But I think – I think the Secretariat must be asked to check. It is just that it will be easier if we know the

surname of the CFO. When you do remember

ADV SONI SC: I think it is Mr Dubeck Chair.

MR MONTANA: Dubeck.

CHAIRPERSON: Hm.

MR MONTANA: I think it is Dubeck.

ADV SONI SC: I think it is Dubeck.

CHAIRPERSON: Oh okay so I think – I think the legal team should ask the Secretariat to check if there is such an affidavit. So – so that it can be looked at. So I think Mr –
10 what Mr Soni is saying Mr Montana is he cannot say such an affidavit does not exist but he is not aware of it other than the – such affidavit as may have accompanied the application for leave to cross-examine. So bearing in mind that in an application for leave to cross-examine that is me now talking it is likely that they would have put up their version and obviously if they knew that there was an issue about whether they made any payments to Precise Trade they might – they would have had to deal with that. But I think rather than speculate let us get that affidavit in relation
20 to the application and let us get this Secretariat to check is if there is any other affidavit from – by the same person and then we will take it from there. And then whatever is obtained will be shared with you Mr Montana.

ADV SONI SC: It was – may I make one other point?

CHAIRPERSON: Yes.

ADV SONI SC: Mr Montana is to say now that he had talked to Mr Van Der Walt. We do not know when he has done that. The importance of that Chairperson is that Mr Van Der Walt this report was emailed to Mr Van Der Walt wherever he is in Texas as we understand it. Mr Van Der Walt has not taken the trouble to present his version. He knows what we were going to present to him and so we have nothing from him. His partner came and gave evidence on the basis that they accepted in good faith what is contained in his letters
10 because those letters were in response to concerns they had raised with him. So this notion that there is – there are these loose documents and what is important Chairperson is in none of these two letters that Mr Van Der Walt writes does he say there look man what is reflected as my notes may not be correct. He in fact says these are the payments with no qualification made. He presents the transactional account to them. So we would like to know to where did the money come from?

CHAIRPERSON: Yes well let me just say this so you – you
20 know Mr Montana. I do recall that at some stage I think there was the question whether since Mr Van Der Walt is – cannot be compelled to come here or even to depose to an affidavit when he is outside of South Africa whether some documents should be given to them and I said even if he cannot be compelled if we can if we know where he is he

should be given the documents – he should be asked for his version. If he does not comply there is nothing we can do but he should be. So I just want to mention that I certainly said that should be done and from what Mr Soni says it was done. So ja.

MR MONTANA: Chair can I address you? Thank you Chair. You know – you know Chair I listened to Mr Soni and I think that he – he made statement. Now this last statement we do not know who paid.

10 Before I intervened that TMM paid Chair I spoke to Riaan when the matter went to court. It was in the country and let us leave Riaan Van Der Walt on the side.

Let us deal we said the method of investigating corruption is a flow of money. All on the track of money. Chair. Now here the money does not show notes are now being accepted. A note that is written Chair and I ask Riaan what did you mean by this? Okay.

Chair I think that – I think that I want to put it here Mr Soni does not know who paid and he says he does not know
20 and thirty minutes ago he said these monies are paid for by TMM.

Chair I am – I want to say I have said before firstly they are false and that is why Chair it is not a mistake that they want to deal with four properties that are not my properties but that is someone else properties. And then –

and then keep things that are there.

But let me just quickly mention Chair page 32 – 30 118.

CHAIRPERSON: Ja.

MR MONTANA: The persons mentioned who in some way of the other – of the other – or the other participated in the transactions or facilitated them have been invited to set out their versions.

Mr Soni says I have been invited to set out my
10 version and that is why Chair I refused in July. Chair that is not true. In fact on our first day here I said – I indicated to the Chair that when I was served the 10.6 I rejected. I said the Chair is unlawful.

Chair my first affidavit was given to this commission in – in August 2019 and I addressed the issue of properties exactly what I said here you – when you look at my first draft this commission tried to curtail my evidence Chair and what they were trying to do they were trying to get me to speak to certain things and tell me others are outside of the Terms of
20 Reference. Werksmans I was told Chair Werksmans or Werksmans whatever it is called I was told it is outside the Terms of Reference of this commission – 00:18:47 by this commission.

The reason why I did not appear for almost two years Chair this commission had tried to terminate and limit my

response. So when they served me with 3 – Rule 3.3 Notices I said but I prepared an affidavit and I address all those issues. And if indeed the commission is of the view that I did not address some of the Rule 3.3 let me know and then I will supplement. But I believe that if you look at my comprehensive – at that time I – my first draft to the commission Chair was about 245 pages. So I addressed my properties.

I did not need the commission to serve me with a
 10 notice when I volunteered to come I knew that one of the public issues being raised was the issue about properties and I said I am going to assist the commission with information.

So Chair I want to say that Mr Soni knows that is not true. There is – in my affidavit I have attached all my correspondence and in my first day Chair I spoke openly about it how my relationship – I have had a bad relationship with this commission because it has tried on numerous occasions and I was surprised Chair by the way when you
 20 asked you say Mr Montana you have written a letter to me – you referred to a letter of 26 July 2019. And I said the Chair has not seen the letter. Yes I wrote the letter and I directed it to the Chair.

So Chair the issue about the response about 210.6 I even spoke to some of the people in the legal department of

the commission I said how do you guys mislead the Chair to issue a 10.6 regulation against me. I will not honour it and if the Chair is fair – I used those words in an email to the commission – if the Chair is fair he will want to understand my side of the story. And you what I was saying in that story Chair in simple terms I said I will address each and every allegation made against me okay and those I have addressed even in a specific way in my affidavit.

Chair the – by the way this – these allegations
10 against me whilst they are old they were made here in the commission eight months after I have presented my draft statement which addressed the very same issues.

So – so number 1 Chair on 10.6 Chair the – Mr Soni knows it is not true.

Secondly Chair so in 118 I was there – I was the key person – I was served with 3.3. Oellerman spoke to all other people he never spoke to me Chair because he never had an interest.

Thirdly Chair Oellerman says I am basing my
20 documents on court – on court papers. Court papers on these matters of Siyangena Chair at that time when he called the information actually records the fact that Siyangena and TMM had actually said we never paid a cent to this company.

Yet it is being – it is being pushed in the way that it has. He says Chair – Mr Soni Mr Loubser's affidavit will

deal with it. Chair Mr Loubser's affidavit does not deal with it actually it does not – it just referred to – it is actually dealing with the process on the law firm and not this – these allegations because he said we did not know about them. We are learning them about for the first time.

Now Chair the ...

CHAIRPERSON: Okay.

MR MONTANA: Chair let me – I just noted four points just to complete them quickly Chair. The – the – he caused the
10 report where they say the relationship and you can see he is speculating there Chair.

But I think Chair when Mr Soni made the statement and said TMM paid okay this commission has got a very simple task it has got investigators Chair. Let us go to the bank and get the accounts the bank accounts of TMM and see the very same process he has been taking me through and can you see that I am 00:22:53 to that. It will show Chair – it will show that in fact no such payment and I have satisfied myself around that.

20 What is based on Chair it is based on what Mr Soni has been trying to do. To takes notes – now he said in the statement there are certain things Mr Van Der Merwe said in his statement sorry rather in his letter to his partners but those are not reflected in the statements.

Now if that is the case it tells us that there were

other activities and probably other accounts at play not only one account.

Now they are ignoring bank statements and the facts what they are trying to do they are trying and Riaan said it very clear they say no I am dealing with a lot of people including investors and other things into my company I work – I handle the issue of properties for the company there. So when I do I pay Peter and – I rob Peter to pay Paul and visa versa depending on the availability of cash in my account.

10 Now and I – I then suspect that the reason why he wrote TMM loan it means he says if I have got this amount of money in our account okay I use it, pay back and all of those things. Now Chair the issue is we then need to confirm. Follow the money. The money must say – it says two things. It says 3.5 was paid by TMM. I ask; TMM says no it is not us, we have never paid that amount – that money.

 It then says TMM paid 7.5 okay. That again is also not true. Mr Soni as he is building towards this point because I know Chair – I know because I know – I have been
20 through this before. I know where he is heading to and I am allowing him to continue asking the point because I know where the falsehoods lie.

Because for the past six years I have been accused of these kind of things. Now Chair I think the other than all these things there are three specific questions.

Where is that affidavit and I think we need to get to today probably lunch time and read it like we did with the Wagner one.

Let us get the actual bank accounts so that what Mr Soni is saying – what Werksmans is saying – what Mr Pieter Louis Myburgh is saying we can show for example that they are not true.

And thirdly Chair I think that Mr Soni should either change his statement or withdraw because he says he does
10 not know – he cannot say to you it was paid by this and he says he does not know. It is not true Chair it is false.

CHAIRPERSON: Yes. Okay Mr Montana. Let – just remember that Mr Soni is – has no personal knowledge of whatever happened. When he says if he said so this amount was paid by TMM my understanding of what he is saying is it would appear from these documents that this is what happened and giving you an opportunity to say no but that is not true and this is why it is not true.

So he does not have personal knowledge of who paid
20 what – when he looks at the documents and then says as I understand these documents I understand them to reflect that so and so paid so much to so and so on such and such a date, what do you say? That is my understanding of what he is saying.

MR MONTANA: Chair I – Chair I am afraid – I am afraid

Chair and I want to ask respectfully Chair Mr Soni said after he realised that I sold my house – remember that question?

CHAIRPERSON: Hm.

MR MONTANA: He said I can conclude and put it to you that this was not a property transaction it was something else. Okay. He says that based on what he has seen Chair. Okay. And then she comes and make a different – another statement.

Now Chair I will tell you that if Mr Soni and the team
10 were assisting you and putting all the facts before you and not jump and I want to say that he has been selective Chair. You can see Chair that this property story and I should not have agreed to it Chair with hindsight I should not have agreed I accepted your guidance. I should have insisted that my affidavit be dealt with in full. Because I have said there is bias – there is predetermined agenda. It is playing itself out here Chair and I am being asked about documents that have been lifted not the investigations of the commission and I want to tell – I want to say to this commission I have
20 said Chair that when I came here and I want to repeat the statement consistently. When I came here I was told that Montana paid for properties R36 million and these were paid for by his – by a contracted party to PRASA.

I said that is false. And I then indicated the details of these transactions and how I was able to pay for 1,2,3. That

is one Chair.

We are no longer talking about the R3 million – the 36 million. We have moved to something else. Okay. Now we come to this issue and you can see Chair that what he is getting at – what he is getting at in this statement is the – it is not the money in the account it is the handwritten notes because those are suggest – those are – that is why he says these have not been denied by Mr Riaan Van Der Walt but those are not transactions – they are notes – handwritten
 10 notes Chair. And unless if he know what was in the mind of that person he would not be able to say for certainty I take that as it is. And he – he meant it Chair. As evidence leader I said it yesterday Mr Soni you have got a duty to assist the Chair towards finding the truth. Now you are peddling – you are peddling you know what are effectively stories that have been created by other people outside and that is why Chair I actually object Chair to all these documents that have been lifted I will never Chair agree to answer questions based on documents that have been lifted. I want that affidavit to be
 20 here to be read so that the commission – the Chair can have the total picture of what – of what it is.

So his response I reject Chair I do not accept.

CHAIRPERSON: We – for the lunch break.

ADV SONI SC: As you please.

CHAIRPERSON: Mr Soni shall we – will you say whatever

you wish to say when we come back or do you want to...

ADV SONI SC: No, no I will say it when we come back – just let me check what the..

CHAIRPERSON: When we come ja. Yes okay.

ADV SONI SC: What the documents say.

CHAIRPERSON: We are at nearly twenty five past one let us resume at half past two.

ADV SONI SC: Thank you Chair.

CHAIRPERSON: We adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue. You were going, Mr Soni, to say something in response to what Mr Montana had said before lunch. You may do so but I want to plant this idea that in order to make sure that we make progress, it may well be that your team should note the things that Mr Montana has said around the criticism that he has articulated but maybe not respond now. We carry on,
20 trying to finish what we have to do and then at some stage when it is done, you can then deal with all the criticism and so on so that we make progress otherwise, we get held up.

ADV VAS SONI SC: As you please, Chair.

CHAIRPERSON: Ja. No, that is fine. Let us do that. But it is important that your team members, your team note all

the criticism, all the concerns that Mr Montana has mentioned.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So that they can be looked at on their merits at some stage later.

ADV VAS SONI SC: As you please.

CHAIRPERSON: Ja, okay alright.

ADV VAS SONI SC: May I, though, raise one point to this and we have a resourceful... [Speaker's microphone is not
10 working properly – speaker unclear]

CHAIRPERSON: Yes, just pull the mic closer to you.

ADV VAS SONI SC: Oh, sorry.

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...managed to get the email that Mr Montana was concerned about from Ms De Beer. May I just have leave to hand that up? That will just clear ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: ...one small part.

20 **CHAIRPERSON:** Okay. No, that is fine, that is fine.

ADV VAS SONI SC: At least we know that we can ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...we can attend to that.

CHAIRPERSON: Okay.

ADV VAS SONI SC: [No audible reply]

CHAIRPERSON: Yes, Mr Soni?

ADV VAS SONI SC: As you please, Chairperson.

CHAIRPERSON: H'm?

ADV VAS SONI SC: If I could just read into the record what the email says and then perhaps you should give it an exhibit number if we want to admit it but ...[intervenes]

CHAIRPERSON: Yes, starting with who it is from and who it was addressed to.

10 **ADV VAS SONI SC:** Yes, as you please.

CHAIRPERSON: And what the subject matter is.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And the date, ja.

ADV VAS SONI SC: And you will see, Chairperson, based on what is contained in paragraph 3 of Ms De Beer's affidavit, the reference is J ...[intervenes]

CHAIRPERSON: I am sorry, you ...[intervenes]

ADV VAS SONI SC: ..BQ.

20 **CHAIRPERSON:** You want us to link it with what page and what bundle?

ADV VAS SONI SC: Page – oh, sorry, Chairperson. Bundle – page – Bundle 8, SS-18, page 121.

CHAIRPERSON: 121. Oh, that is Ms De Beer's affidavit?

ADV VAS SONI SC: Affidavit. We are just going to finish that very quickly but I thought ...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: ...to clear that up, that will help, Chairperson.

CHAIRPERSON: Ja.

MR MONTANA: Chair, can I object?

CHAIRPERSON: What are you objecting to before he reads it?

MR MONTANA: Because this is – no ...[intervenes]

CHAIRPERSON: Ja?

10 **MR MONTANA:** I am glad that this is here.

CHAIRPERSON: Yes.

MR MONTANA: But let us not regularise something that is irregular.

CHAIRPERSON: Yes, but I want to hear what he has to say about it first. What are you talking about?

MR MONTANA: Yes, but I am saying that we are even giving it a number and everything when we are supposed to deal with it, Chair.

CHAIRPERSON: Well, I have not given it any number.

20 **MR MONTANA:** He was mentioning the number, Chair.

ADV VAS SONI SC: And I have said once I have read it in, we can decide whether we want to admit it as an affidavit – as an annexure, Chair.

CHAIRPERSON: So let him read – let me see what it is. He can explain. And let me hear what he says. Then, if

you have something to say, then you can say it.

MR MONTANA: [No audible reply]

CHAIRPERSON: Okay.

ADV VAS SONI SC: I was merely saying, Chairperson, that when one looks at the title given to the document, it is Annexure KDB-2. It is the same one referred to in paragraph 3. That is the one Mr Montana was concerned about. And this is an email from Ms Ursula Willis dated the 11th of March 2013 to bookings@armani(?). That is
10 obviously Ms De Beer's company and CC'd is Mr Montana and the subject is: Mr TL Montana, address(?) for valuation centre. And it says:

“Hi, Daniel.

There is the address for a copy of the approved plans.

However, the valuation you provided us with from is from 2009.

Since then the property prices have changed.

I spoke to Nolene and the Regional Head,
20 William ...[indistinct] and they will not be able to value the property for more than R 7.5 million based on the current market conditions.

Due to this, I do not want you to waste your time dropping off the plans.

We will not be value for any more than we have...”

And it is – signed by – or sent by Ms Willis.

CHAIRPERSON: So you are saying this is the annexure that is referred to in Ms De Beer’s paragraph... Is it paragraph 2?

ADV VAS SONI SC: Paragraph 3, Chairperson.

CHAIRPERSON: No, paragraph 3.

ADV VAS SONI SC: On the second line.

10 **CHAIRPERSON:** That Mr Montana was saying it should be *who is in content?* [Speaker not clear]

ADV VAS SONI SC: yes.

CHAIRPERSON: Okay. Before we proceed. Mr Montana, do you want to say something?

MR MONTANA: Well, Chair, I am glad this thing is here.

CHAIRPERSON: Ja.

MR MONTANA: Because again, this email is so material in two respects.

CHAIRPERSON: H’m?

20 **MR MONTANA:** The first one is the fact that it shows how the first plan around for buying this property was me approaching the bank. That is why – this email from Ursula Willis. Secondly, it confirms the point I was making that the reason why did not proceed is not because of any shenanigans. It is precisely because the bank refused to

value this property for more than seven point five.

CHAIRPERSON: Yes.

MR MONTANA: Well, I think the bank was wrong but that is immaterial. The factual evidence before us. It tells us the story, Chair. Now if you take this out of the equation okay? Then you are going to tell us about the fact that we were doing in isiZulu [speaking vernacular]. So you are keeping this out because you are trying to say: No, no ...[intervenes]

10 **CHAIRPERSON:** Yes but hang on Mr Montana. I know what you think about its absence earlier. You have told me that but now it is here. You have no problem that we admit it?

MR MONTANA: No, no Chair. That is the second issue.

CHAIRPERSON: Ja, what do you say?

MR MONTANA: The second issue Chair is about – I know you are giving a directly from how the team should be dealing with that.

CHAIRPERSON: Yes.

20 **MR MONTANA:** Chair, you are sitting with a chap who is very unhappy here.

CHAIRPERSON: H'm?

MR MONTANA: And I am not going to let it go, Chair.

CHAIRPERSON: Ja, ja.

MR MONTANA: I am afraid, Chair, you have to

...[intervenes]

CHAIRPERSON: No, no, no. You have got to put your side, put how your concerns ...[intervenes]

MR MONTANA: Thank you, Chair.

CHAIRPERSON: Ja.

MR MONTANA: Chair, as Mr Soni spoke earlier on.

CHAIRPERSON: H'm?

MR MONTANA: I said, of course, we have said that the statement from Ms De Beer ...[intervenes]

10 **CHAIRPERSON**: H'm, the affidavit.

MR MONTANA: The – no, it is not the affidavit, Chair. It is a sworn statement in the matter in court. It is not a state – it is not an affidavit deposed to, to the Commission, Chair.

CHAIRPERSON: No, no it is not a – it is a – on the face of it, it is an affidavit. A sworn statement and an affidavit is the same thing.

MR MONTANA: Yes, Chair.

CHAIRPERSON: But ...[intervenes]

20 **MR MONTANA**: Not ...[intervenes]

CHAIRPERSON: ...probably made it to the Commission.

MR MONTANA: Chair, it was not for this Commission.

CHAIRPERSON: Ja-no, I ...[intervenes]

MR MONTANA: And therefore ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: And therefore, the issue that I have raised before. I said the admissibility of all these documents that were lifted(?) that they are not the – you have made the point and I have accepted it, Chair.

CHAIRPERSON: Ja, ja.

MR MONTANA: Look, when we investigate, we look at everything.

CHAIRPERSON: Ja, ja.

MR MONTANA: Here it is not looking at everything. It is
10 the Commission placing reliance on these documents that I even say beyond that are improperly obtained. So I am saying, Chair, that for now we know this document until such time, Chair, that overall with all these documents, as you have now directed, that you look at this document and satisfy yourself.

And I am saying, Chair, that they undermine the impact on the very integrity of this Commission. It is like something is being sneaked in for an agenda even if that is not so, it says that. And I think that Chairperson should
20 not take this lightly. So I am saying Chair that is the next step for now until you have made the determination we noted.

I knew this email, Chair. That is why I could not provide it because I am replying here. But let me make, Chair, the second point that I think it very important.

CHAIRPERSON: H'm?

MR MONTANA: I am going to continue with evidence, Chair, responding to being taken through this document. Mr Soni said, did not say Siyangena or TMM only paid. He said we know that. Now we know that, is he speaking on behalf of the Legal Team? Is he referring to the Commission?

Chair, the fact of the matter is that, for us to proceed now with this document and this thing that is
10 based on lies, I think the Chair should request – I am willing – I am not happy but I am willing to come here again tomorrow Chair. We get this affidavit and we get the bank statements, Chair, because the crux of why we are sitting here centres on what Mr Soni has said – was dealing with about who funded these properties.

You remember yesterday, and this will be my last point, Chair. Yesterday I explained. I said when you look at Precise Trade, it is quite clear from the very statement that I have been presented that there a lot of people, there
20 are a lot of investors in there. And you can even see on some of the notes. This Commission has jumped all of those.

Chair, and I am speaking on the strength of what has been asked from me. That there are other people involved. Now the question arises. The lie of this is that

TMM/Siyangena paid and I am making a submission that they did not pay, Chair. I have checked and I am satisfied with the information and we think that if Mr Soni says Siyangena or TMM paid to Precise Trade.

Chair, we have to put this thing on the table now before I even proceed with all of this because I cannot answer on – because this thing – the whole thing is based on a lie, Chair. And I do not see how I am even going to participate in it. I am going to sit, listen Chair. I want to
 10 help the Chair. I think it is either we do what we did yesterday.

Chair, get that affidavit, number one. The Chair get the basis of that statement that Mr Soni has said, okay?

CHAIRPERSON: H'm?

MR MONTANA: We put them on the table. And finally, Chair. He says, Mr Soni, that they have replied, they have responded to the statement of the application by TMM and Siyangena but Chair I have then been furnished – as a
 20 person – I am probably the, as the word goes, the number one accused and... accused has not been. Even if we were in a criminal court, Chair, I just – my legal team will stand up and say: We are not given these documents. We are seeing them for the first time. And a good judge will say the matter is dismissed. Go home, Mr Montana.

So Chair, I am saying I do not want us to jump and proceed. I know, Chair, that you are saying study(?) but the issue of the payment is so central that it affects about how we deal with the remainder of this fact. So I am prepared, Chair, until late tonight if we get. I know that you have got an afternoon session.

CHAIRPERSON: Ja.

MR MONTANA: But my request, Chair, will be that this is so fundamental, it has got a bearing on how I am going to
10 be asked this question, Chair. Mr Soni says ...[intervenes]

CHAIRPERSON: But let us ...[intervenes]

MR MONTANA: ...before him there is a corrupt man ...[intervenes]

CHAIRPERSON: Let us take this step by step, okay. Now with regard to this document.

MR MONTANA: Yes?

CHAIRPERSON: Mr Soni can reflect on how it – how he wishes it to be dealt with. One approach is for it to be admitted separately. Another approach is for it to be
20 slotted behind Ms De Beer's affidavit on the basis that it is where it is supposed to have been. Of course, you might have to collect another possible approach on that. Those are the two that come to my mind. Admitting anything does not necessarily mean what is written there is true.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: That is a separate issue. So when it comes to the other documents we are talking about, I get the impression that part of your concern, maybe the main concern is that, you are saying, what is contained in those documents, or at least some of it, is not true and that is part of your concern. But in addition to that, you still have this concern about the affidavit that you were talking about before lunch. Now let me ask. During the lunch break, was the Secretariat asked to look for it? They might not
10 find it so quickly.

ADV VAS SONI SC: We have found it, Chair.

CHAIRPERSON: You have found it?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Oh, okay. Are there enough copies?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Oh, okay. Well, why – I think, why do you not hand it up? Give him a copy and then we can take it from there.

ADV VAS SONI SC: [No audible reply]

20 **CHAIRPERSON:** I am stopping, Mr Montana. I am not continuing because I did not know that it has been found. So the fact that it has been found might affect what we are going to do next. So I am not continuing with what I wanted to say.

MR MONTANA: Yes, Chair.

CHAIRPERSON: Ja.

MR MONTANA: Except, Chair, that – on two things.

CHAIRPERSON: Ja.

MR MONTANA: I agree with you Chair that – you know this email supports my version, Chair.

CHAIRPERSON: Yes.

MR MONTANA: I should be jumping and say let it be admitted.

CHAIRPERSON: Yes, yes.

10 **MR MONTANA:** So when you say that it can be admitted separately.

CHAIRPERSON: Ja.

MR MONTANA: Maybe Chair that there is something that I can live with.

CHAIRPERSON: Ja, ja.

MR MONTANA: But Chair, your summary of what my problem is ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...about these documents.

20 **CHAIRPERSON:** Ja, is not complete.

MR MONTANA: It is not complete, Chair.

CHAIRPERSON: Ja.

MR MONTANA: Let me indicate what I am saying.

CHAIRPERSON: Ja.

MR MONTANA: I am saying – and you remember I raised

the issue about fairness, that the Commission has to evaluate evidence on both sides.

CHAIRPERSON: Ja, ja.

MR MONTANA: And then come - the Chairperson will come to a determination. That I respect, Chair.

CHAIRPERSON: Ja, ja.

MR MONTANA: What we are having now, Chair. Because the evidence leader is an extension of the Commission. He is assisting the Commission in completing the job.

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

MR MONTANA: The Commission, therefore, has now enter the arena. It is boxing with me Chair. That is the issue. The Commission has accepted a particular version which is false.

CHAIRPERSON: H'm?

MR MONTANA: Now I am not saying it must except the true version but what the Commission should do is to say that all the people are making allegations against Montana, let them find – let them put their affidavits.

20 **CHAIRPERSON:** H'm?

MR MONTANA: And that they are led through a process. The evidence leader leads them through that process and then I am invited to come and reply to them and then I also have my rights to either cross – to decide to apply to the Commission. These people, Chair, are not here in the

arena. I have Mr Soni standing here and say Siyangena or TMM paid for these properties and he says we know that. He says it firmly Chair. That is what he said, okay? I am saying it is false.

And I am saying the reason why it is happening is because of how we deal with this evidence. So the most proper and fair way is to say all those people who are making – so if Werksmans or Paul O’Sullivan or anyone who wants to believe they have got evidence to support
10 their things, they must not do it behind Mr Soni, okay?

They must do it themselves and Mr Soni can lead them and then I am invited, Chair. What is happening now. I am here at the Commission to assist the Commission and I am boxing with the Commission because the Commission has admitted evidence that is not its own evidence. It is being what? Lifted. Okay?

In the process of investigation – who lift. But in terms of placing reliance on a version that has to be put before the Commission. Chair, it cannot be. In fact, it
20 tells us that this process is so fundamentally flawed. And Chair, that is my – that is the heart of my objection. That the people who are making accusations against me, they are not here.

CHAIRPERSON: Ja.

MR MONTANA: But they are speaking through Mr Soni

selectively.

CHAIRPERSON: Ja, okay. So as I understand your position, as it stands now – as we stand now, it is this. One. There are documents here that you are going to be questioned on. You have a problem being questioned on those documents before certain people are called to give evidence in connection with those documents. You say those people who maybe accusing you, they should depose to affidavits first and subject themselves to questioning by
10 the Commission and thereafter you get called to respond to that.

MR MONTANA: And I can also say it is right my cross-examine ...[intervenes]

CHAIRPERSON: You can then apply for leave to cross-examine them. Now, maybe before I say anything. With regard to – I know that I said earlier on, Mr Soni, maybe the Legal Team can deal with this later. Do you want to say anything on this limited issue about his position?

ADV VAS SONI SC: Chairman, I do not want to inflame
20 his situation that seems ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...to have heated up. I do not know for what reason.

CHAIRPERSON: Ja.

ADV VAS SONI SC: So let me not say anything. I rather

hear your ...[intervenes]

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: ...your way forward, Chair.

CHAIRPERSON: Okay. Now maybe to be on the safe side. Let us just identify the documents that you have a concern with before I can go further. Let us identify which ones exactly.

MR MONTANA: Chair, it is the preliminary report and I mentioned it this evening(?) ...[intervenes]

10 **CHAIRPERSON**: Ja, ja.

MR MONTANA: ...with all its annexures, Chair.

CHAIRPERSON: Okay, okay.

MR MONTANA: With all – except, Chair, the – except the affidavit of mister – is that a Robert?

CHAIRPERSON: Ja, the partner for ...[intervenes]

MR MONTANA: The partner.

CHAIRPERSON: ...Mr Van der Walt's partner.

MR MONTANA: Exactly, Chair. And ...[intervenes]

20 **CHAIRPERSON**: You do not have a problem because he testified.

MR MONTANA: He testified – he presented ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...the others testified, Chair.

CHAIRPERSON: Ja.

MR MONTANA: And now it is clear that they did not even

deposed of affidavits.

CHAIRPERSON: Ja.

MR MONTANA: How are they allowed to come here, Chair?

CHAIRPERSON: Okay. Let us go to that report Mr Soni. Where do I find that report, first? I just want us to – I want to see the actual documents.

ADV VAS SONI SC: The reports itself ...[intervenes]

CHAIRPERSON: So, basically, the documents are those
10 which are annexures to the preliminary report except for ...[intervenes]

MR MONTANA: His affidavit, Chair.

CHAIRPERSON: Ja, okay alright.

ADV VAS SONI SC: Yes, so that is Bundle 8 ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...SS-18, Chair.

CHAIRPERSON: H'm? And what page?

ADV VAS SONI SC: The report starts at page 4.

20 **CHAIRPERSON:** Page 4. It starts at page four and goes up to page 32 and then the annexures start from page 34. Is that right?

ADV VAS SONI SC: Yes, that is.

CHAIRPERSON: And they go up to – up to what page?

ADV VAS SONI SC: Well, the whole document together

with the annexures – to the annexures goes up to page 240.

CHAIRPERSON: Two, four, zero?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Is that right at the end?

ADV VAS SONI SC: Yes. No, sorry, 241.

CHAIRPERSON: 241. Yes, okay. And as I understand your concern or objection. It is simply that because certain people who are connected with these documents
10 have not deposed to affidavits and have not testified?

MR MONTANA: Some ...[intervenes]

CHAIRPERSON: ...deposes ...[intervenes]

MR MONTANA: Some testified without evidence.

CHAIRPERSON: Yes, ja.

MR MONTANA: So without ...[intervenes]

CHAIRPERSON: Deposing to affidavits.

MR MONTANA: Yes, to this Commission.

CHAIRPERSON: Ja.

MR MONTANA: Particularly all those lifted documents,
20 Chair.

CHAIRPERSON: Ja.

MR MONTANA: I am saying let us put them aside.

CHAIRPERSON: Ja?

MR MONTANA: Whoever is behind them, let them come.
Let us – we can do it this week. Let them depose of

affidavits. Attached these very documents.

CHAIRPERSON: H'm?

MR MONTANA: And Chair my right, I am not trampled upon Chair.

CHAIRPERSON: Okay let us clear this. In respect of those people who testified, even if they did not depose to affidavits. Do you have a problem with that, to their documents?

MR MONTANA: Chair, the document that we have just
10 been discussing ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...of Ms De Beer.

CHAIRPERSON: Ja.

MR MONTANA: I am not sure. Attached this document.

CHAIRPERSON: H'm?

MR MONTANA: I am saying that, for example, there is a big problem with that. The report I have a problem with, Chair.

CHAIRPERSON: Ja-no, the report I ...[intervenes]

20 **MR MONTANA:** That we have passed.

CHAIRPERSON: Ja.

MR MONTANA: The ...[intervenes]

CHAIRPERSON: Ja, maybe we can go through ...[intervenes]

MR MONTANA: We ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: Chair, the – there is a Parkwood issue.
Chair, there is the documents there. Then there is
...[intervenes]

CHAIRPERSON: I am sorry.

MR MONTANA: ...the document we have dealt with earlier
on already, Chair.

CHAIRPERSON: Let us ...[intervenes]

MR MONTANA: We cannot withdraw it, Chair.

10 **CHAIRPERSON:** H'm?

MR MONTANA: I am saying there is a document on
Parkwood ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...which – I am happy with Parkwood,
Chair.

CHAIRPERSON: Ja.

MR MONTANA: I think that ...[intervenes]

CHAIRPERSON: There is no problem with Parkwood.

MR MONTANA: It supports my story fully.

20 **CHAIRPERSON:** Ja.

MR MONTANA: Now Chair, we have got Annexure OR-2.

CHAIRPERSON: Tell me what page so that we can
...[intervenes]

MR MONTANA: It is page 98.

CHAIRPERSON: Anything before page 98 is fine?

MR MONTANA: Chair, no. There is a report before.

CHAIRPERSON: Ja-no, the report I know. Ja.

MR MONTANA: Ja. Then there is Parkwood. We have dealt with.

CHAIRPERSON: Ja, ja.

MR MONTANA: But it is the same principle, Chair.

CHAIRPERSON: Ja.

MR MONTANA: That apply. We have already ...[intervenes]

10 **CHAIRPERSON:** But we have dealt with it.

MR MONTANA: We have dealt with this.

CHAIRPERSON: Ja.

MR MONTANA: So I do not want to go back.

CHAIRPERSON: Yes.

MR MONTANA: Chair, then there is the ...[intervenes]

CHAIRPERSON: So we start from where there is a problem.

MR MONTANA: I think we started at page 98, Chair.

CHAIRPERSON: Page 98.

20 **MR MONTANA:** Ja.

CHAIRPERSON: Okay.

MR MONTANA: And ...[intervenes]

CHAIRPERSON: Yes. That particular document is what? What is that document, Mr Soni?

ADV VAS SONI SC: That is a commentary on the

annexures that flows from page 105.

CHAIRPERSON: Yes.

ADV VAS SONI SC: So what one did there, Chairperson, is. Took the documents and set out from page 98 to 104 what the relevant document say.

CHAIRPERSON: Ja, okay. That - you have problem with that?

MR MONTANA: I have a big problem, Chair.

CHAIRPERSON: Yes.

10 **MR MONTANA:** If you look at page 27.1.

CHAIRPERSON: Ja.

MR MONTANA: Now that is actually at the heart. So the Commission has summarised this document.

CHAIRPERSON: 271?

MR MONTANA: If you look at page 99.

CHAIRPERSON: I am sorry.

MR MONTANA: And that is – what is it called? Bundle 8, Chair.

20 **CHAIRPERSON:** Ja, you are referring to page two something just now.

MR MONTANA: [No audible reply]

CHAIRPERSON: You said it is at the heart of ...[intervenes]

MR MONTANA: Yes-no, I am saying – well, I was looking at the number of the document but I referring to the red

number 99, Chair, at the top.

CHAIRPERSON: 99. Yes?

MR MONTANA: 99.

CHAIRPERSON: Ja?

MR MONTANA: And if you look at paragraph 7.

CHAIRPERSON: Paragraph 7, ja.

MR MONTANA: 7.1, 7.2, 7.8 and all of those things.

CHAIRPERSON: Ja, ja.

MR MONTANA: This is a summary by the Commission, as
10 Mr Soni said, but they are pulling this information
...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...from the documents.

CHAIRPERSON: Ja.

MR MONTANA: And I am saying, it is not only false,
okay?

CHAIRPERSON: H'm?

MR MONTANA: And if it was false and it is said by a
witness, it will be fine. I will be willing to challenge that
20 witness.

CHAIRPERSON: H'm?

MR MONTANA: Now Mr Soni has gone summarise and
advise the Chair ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...on something that is very false. Now I

must fight. Basically, I am put in a position Chair
...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...where I must actually fight Mr Soni to
try to prove to him ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...that this is not true.

CHAIRPERSON: Ja.

MR MONTANA: Okay?

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

MR MONTANA: And Chair, let me say that I have noted
and kept quiet because if you look at even the line of
questioning, it is not one that opens up and say we are
trying to – and give him these various options. I am taking
through this. At the end, I am told that someone will.
Okay?

CHAIRPERSON: H'm.

MR MONTANA: That is a let-off(?), Chair.

CHAIRPERSON: H'm?

20 **MR MONTANA:** All these witnesses who were here,
especially in respect of PRASA, sitting here, Ms Ngoye,
they were give the platform to say everything under the
sun. For me, I am not even asked on a particular issue, I
said can you – Mr Soni says, Mr Montana, let us agree on
the methodology. I said I agree. He said the methodology

is going to be let us confirm the factual matters and then we will then take it from there. I allowed on Parkwood, Chair, knowing that Parkwood is even my strength, I built the property and I sold it. But when he finished that, the very same – to facilitate of this Commission, he then comes to a conclusion, he does not say having then confirmed some of these factual issues, I want to put the following propositions. They were not – it was for me to accept or to reject, he moved from those – down those

10 propositions and then we concluded on that matter, Chair, where he says I am putting to you and says some people will say that – now that evidence was not even tested.

Now if you look at 7.1, 7.2 and all of those, which is a summary of the Commission, I do not have any problem with somebody being wrong, it should not be the Commission, the Commission cannot be factually – cannot get its facts incorrect because they have lifted this thing from somewhere. If they come to that determination as a result of the investigation it is fine, Chair.

20 So you can see that document, Chair, 7.1, 7.2 and you go on and all of those things. This Commission moves from the premises which belies the statement made by Mr Soni before lunch that there is the propaganda machinery out there has been telling the country that ...[intervenes]

CHAIRPERSON: Okay, okay, no, no, that is fine, I

understand. So but this is – you have a problem with this document. I just want to identify the documents that you have a problem with.

MR MONTANA: No, Chair, I – yes, yes.

CHAIRPERSON: This is one of them?

MR MONTANA: Yes.

CHAIRPERSON: Right, let us continue, let me identify properly.

MR MONTANA: Chair, can I remind you, that when I say I
10 have a problem I am saying that if there – there are people behind these documents or these allegations, put them forward, I am willing to deal with them and challenge them but not by the Commission, Chair.

CHAIRPERSON: Ja, okay, alright. Let us identify ...[intervenes]

MR MONTANA: 135, Chair, in page 135, there is again a summary.

CHAIRPERSON: When you skip – this document that we have just dealt with, that you have a problem with, does it
20 refer to a number of documents that come after it? Mr Soni? Does it refer to...?

ADV VAS SONI SC: It just refers to the agreement between Mr Montana and the guesthouse [indistinct – dropping voice]

CHAIRPERSON: Okay. What I am trying to is just

identify. So does the agreement, Mr Soni, go up to page 116?

ADV VAS SONI SC: Chairperson, let me – I am sorry, I think we are talking...

CHAIRPERSON: Or is that another one?

ADV VAS SONI SC: The documents that I thought you were saying that Mr Montana had a problem with seems to be in Ms De Beer's affidavit, it starts at page 121.

CHAIRPERSON: No, what we were talking about just a
10 few minutes ago with Ms Montana is the documents at page 98.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So what I am trying to establish now because Mr Montana then moved to a much later page and I am trying to see whether he is jumping other documents because they are part of this one that he says he has a problem with or ...[intervenes]

ADV VAS SONI SC: Chairperson, maybe I can take you to that one by one.

20 **CHAIRPERSON:** Ja.

ADV VAS SONI SC: So after the summary are the documents that I relied on and that starts at page 105, that was the agreement between the guesthouse and Johan Smith. That was from 105 to 110.

CHAIRPERSON: To 110?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay. So that would fall – that is the agreement.

ADV VAS SONI SC: That is the agreement, that is the first document that we went through in regard to ...[intervenes]

CHAIRPERSON: Yes, okay.

ADV VAS SONI SC: So perhaps Mr Montana should be asked ...[intervenes]

10 **CHAIRPERSON:** Oh and then the next document you have a problem with?

MR MONTANA: Chair, maybe let us do it properly.

CHAIRPERSON: Ja.

MR MONTANA: And you started with page 3 with the preliminary report. We have passed that.

CHAIRPERSON: Ja. Yes.

MR MONTANA: Chair, the next one is the notes in respect of page 34.

20 **CHAIRPERSON:** Wait, I am sorry, will your junior just make a note of the page numbers of the different documents? Yes, the next one after the preliminary report?

MR MONTANA: Chair, it is page 34.

CHAIRPERSON: Yes, what is at page 34?

MR MONTANA: Page 34, Chair, is what Mr Soni

...[intervenes]

CHAIRPERSON: Oh what...

MR MONTANA: To the notes.

CHAIRPERSON: Ja.

MR MONTANA: For example, let me give you an example,
Chair.

CHAIRPERSON: Yes, no, no, I see ...[intervenes]

MR MONTANA: Do you see that?

CHAIRPERSON: They fall into the same category as the
10 other notes that you dealt with.

MR MONTANA: As the others, Chair, yes, that is what I
am referring to.

CHAIRPERSON: Yes, okay.

MR MONTANA: Disparity because value and parties'
price, not the Commission saying that. It is Paul
O'Sullivan in his affidavit and now it is a position of the
Commission. So Mr O'Sullivan must file an affidavit.

CHAIRPERSON: Ja.

MR MONTANA: And then he is questioned and we follow
20 the process properly.

CHAIRPERSON: Ja, no, no, no, that is fine, so that is the
next – that goes up to page 39, is that right?

MR MONTANA: That is correct, Chair.

CHAIRPERSON: Okay and then?

MR MONTANA: Chair, you would recall that there is that

long document. I think if you look at the emails, some of the documents that have been lifted. The offer to purchase, Chair, there is no problem.

CHAIRPERSON: Ja, okay.

MR MONTANA: That we must accept, I think that I have signed that, I am happy with that.

CHAIRPERSON: Okay.

MR MONTANA: And then the ...[intervenes]

CHAIRPERSON: Is that the offer to purchase at page 46?

10 **MR MONTANA:** At page 46, Chair.

CHAIRPERSON: Okay.

MR MONTANA: And that will include the addendum.

CHAIRPERSON: The documents that are before page 46 but after the notes, you have no problem with those.

MR MONTANA: Ja, no, for this particular one, Chair, I do not have.

CHAIRPERSON: Yes.

MR MONTANA: So I have a problem with the notes but not the documents, Chair.

20 **CHAIRPERSON:** Ja, ja, so from page 40?

MR MONTANA: Is it page – I thought it is the notes, but it will be page...

ADV VAS SONI SC: Chairperson, would this help because I know the documents and I am familiar with them.

CHAIRPERSON: Yes.

ADV VAS SONI SC: If I can just deal with them in – not to make any comment but just so that ...[intervenes]

CHAIRPERSON: Ja, you know – you can say – ja, you can lead us, ja.

ADV VAS SONI SC: So up to page 45 are those email exchanges between Mr Montana and Ms Willis.

CHAIRPERSON: Yes. Do you have any problem with those?

MR MONTANA: No, no, those are fine, Chair.

10 **CHAIRPERSON:** Those are fine, okay.

ADV VAS SONI SC: Then the next one is the offer to purchase by Mr – from Precise Trade made to Mr Montana, that is at page 46 to ...[intervenes]

CHAIRPERSON: 51.

ADV VAS SONI SC: 51 or 52.

CHAIRPERSON: Or 52.

ADV VAS SONI SC: 52, Chairperson.

CHAIRPERSON: Ja, he said he has not problem with that. Is that correct, Mr Montana?

20 **MR MONTANA:** That is correct, Chair. And then – ja.

ADV VAS SONI SC: 53 to 56 is the Deed of Transfer, Chair.

MR MONTANA: No problem with that, is that correct?

CHAIRPERSON: No problem with that, is that correct?

MR MONTANA: No problem, Chair. Then the addendum

...[intervenes]

CHAIRPERSON: Hang on, hang on, I must hear Mr Montana confirm it.

MR MONTANA: I confirm, Chair.

CHAIRPERSON: You have no problem, ja. That is 53 to..?

ADV VAS SONI SC: Sorry, that is 53 to 56, Chairperson.

CHAIRPERSON: Okay, alright. Yes?

ADV VAS SONI SC: And then the addendum is 57 to 59.

10 **CHAIRPERSON:** Yes, you have no problem with that either, I imagine, Mr Montana? The addendum?

MR MONTANA: The addendum – no, Chair, I am happy with it.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then 60 to – from 60 onwards there are emails between Mr Montana and Mr van der Walt, 60 to 64, Chair.

CHAIRPERSON: 60 to 64? Is it 60 to 64?

ADV VAS SONI SC: Ja, as you please, Chair.

20 **CHAIRPERSON:** Yes, Mr Montana, any problem with those?

MR MONTANA: Chair, I think – no, no, I am happy with those to 64, Chair.

CHAIRPERSON: Okay, okay. Mr Soni?

ADV VAS SONI SC: And then there is 65 to seemingly 76,

are all the designs and photographs sent to Mr Montana by the people who were effecting the building.

CHAIRPERSON: Okay. What about those Mr Montana?

MR MONTANA: No, Chair, that particular document it runs in fact with other emails to page – I think 94.

CHAIRPERSON: Yes.

MR MONTANA: Or rather – I think page 94, Chair.

CHAIRPERSON: Ja.

MR MONTANA: You will recall I even objected because it
10 is those pages with lots of numbers?

CHAIRPERSON: Ja.

MR MONTANA: And we could not even explain what these numbers were, where they are coming from.

CHAIRPERSON: Yes.

MR MONTANA: So I think, Chair, that we will need, of course, that they are there – the confirmation where these numbers are.

CHAIRPERSON: Yes, I understand the part relating to the numbers but with regard to – that is not to a single
20 document, is it not, it is different documents or is it one document?

MR MONTANA: No, Chair, it was presented – there are three different players there. I think that one starts in 86, Chair. Ja, I think the design actually ends up in page 81, so that is from Mr Nugwa.

CHAIRPERSON: Page 91 you mean or 81? Or, no...

MR MONTANA: 65 to 81.

CHAIRPERSON: 65 to 81?

MR MONTANA: Yes, Chair.

CHAIRPERSON: You have a problem with?

MR MONTANA: I do not have a problem, Chair.

CHAIRPERSON: You do not have a problem with that?

MR MONTANA: I do not have a problem, no.

CHAIRPERSON: Okay, that is 65 to 81, no problem.

10 **CHAIRPERSON:** Okay and then 82? Okay, Mr Soni.

ADV VAS SONI SC: 82 to 83 is a job detail sent to Mr Montana.

MR MONTANA: I do not have a problem, Chair.

CHAIRPERSON: You do not have a problem.

MR MONTANA: Even the one after, I do not have a problem.

CHAIRPERSON: Okay, even the one at 84, is that you said? Even the one at page 84?

MR MONTANA: Ja, even the one at page 84.

20 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: 84 is obviously the...

MR MONTANA: Yes.

ADV VAS SONI SC: 84 and 85 are those emails.

CHAIRPERSON: Yes. Is that fine? That is no problem?

MR MONTANA: That is fine, Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: 86 onwards is the ...[intervenes]

CHAIRPERSON: The document he was talking about.

ADV VAS SONI SC: The document, yes.

CHAIRPERSON: Okay, so he has a problem with the document starting at page 86 to...

ADV VAS SONI SC: 94.

CHAIRPERSON: To 94, okay.

MR MONTANA: No, no, Chair, you will recall that we –
10 there is an issue there.

CHAIRPERSON: H'm?

MR MONTANA: 91, if you go to page 91, that is where we have a lot of numbers ...[intervenes]

CHAIRPERSON: Yes, that we do not know what ...[intervenes]

MR MONTANA: We are not even sure.

CHAIRPERSON: Ja.

MR MONTANA: And I said if I look at it, we are not even sure whether it is part of that document. So until – that
20 document, Chair, is – I think that until page...

CHAIRPERSON: Is your only problem the numbers, these figures? Once – there should be an explanation by way of affidavit or something?

MR MONTANA: Yes, Chair, these numbers are ...[intervenes]

CHAIRPERSON: That states what they mean?

MR MONTANA: Exactly, Chair.

CHAIRPERSON: Other than that you do not have any problem?

MR MONTANA: Ja, no, these numbers, Chair, I think if there is an explanation – we do not even know which document that is.

CHAIRPERSON: Ja, ja.

MR MONTANA: They are standing on their own.

10 **CHAIRPERSON:** Ja.

MR MONTANA: So I think that we need to deal with it properly, Chair.

CHAIRPERSON: Okay. No, that is fine. But also, I just pause here to say it depends whether anybody wants to make an issue of them also.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** If nobody wants to make an issue of them, they just happen to be there and they are not going to be put to you, it might not be an issue. You will go along with that?

MR MONTANA: Chair, I am happy.

CHAIRPERSON: Ja.

MR MONTANA: My fundamental issue is that the Commission must not enter the arena.

CHAIRPERSON: Ja.

MR MONTANA: That is the issue.

CHAIRPERSON: No, no, that is fine. Okay, that is up to 94.

MR MONTANA: Yes.

CHAIRPERSON: Continue, Mr Soni.

ADV VAS SONI SC: 95 – oh sorry, 95, 96 and 97 relates to the email to Mr van der Walt from Mr Montana about the appliances.

CHAIRPERSON: Yes.

10 **ADV VAS SONI SC:** And then 97 is the invoice for the order for the appliances.

CHAIRPERSON: Any problem with this?

MR MONTANA: I am happy with that, Chair.

CHAIRPERSON: You are happy with this, okay. And the 98, we know you have a problem with the notes and then the agreement to page - you have no problem with.

MR MONTANA: Until – the notes, they go to 204.

CHAIRPERSON: The notes go up to 104.

MR MONTANA: 104, yes.

20 **CHAIRPERSON:** Ja and then Mr Soni, continue?

ADV VAS SONI SC: Then we have the agreement of purchase and sale.

MR MONTANA: Sorry, Mr Soni, 98 to 104, Chair, we said we are keeping out.

CHAIRPERSON: You have an objection.

MR MONTANA: I have an objection, the notes, I have an objection, Chair.

CHAIRPERSON: Ja, you told me, ja.

MR MONTANA: That is where the false things are carried there.

CHAIRPERSON: No, no, that is fine, you mentioned that. Okay, 105?

ADV VAS SONI SC: 105 to 110 is the agreement to purchase by Mr Smith.

10 **CHAIRPERSON:** Yes, no problem with that?

MR MONTANA: No, Chair, I am happy with that.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Then 111 there is 111 to 116 is the agreement by Precise Trade to purchase the property, the guesthouse.

CHAIRPERSON: Aanmani Guesthouse.

MR MONTANA: I do not have an objection.

CHAIRPERSON: No problem with that, okay. Yes, Mr Soni?

20 **ADV VAS SONI SC:** Then the Deed of Transfer, Chairperson, is at 117 to 120, that is an official document.

CHAIRPERSON: Okay, no problem with that, Mr...?

MR MONTANA: I am happy with that, Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then of course there is Ms de

Beer's affidavit which 121 and 122, Chairperson.

CHAIRPERSON: No problem with that?

MR MONTANA: No, no, Chair, I reject this one.

CHAIRPERSON: Yes? Just articulate your basis?

MR MONTANA: No, Chair, you recall there were three things I said about the document. Firstly, that this statement was meant for the Commission, it was lifted from somewhere, does not address the issues that we have there unless if she does depose of an affidavit.

10 Secondly, you will recall, Chair, address the issue of the annexure which I think that you dealt with.

CHAIRPERSON: Which has been found, ja.

MR MONTANA: We just dealt with that. And also, Chair, I raised the issue that this property was – I think if I look at – at the second paragraph in – was it the second paragraph?

CHAIRPERSON: The third paragraph [inaudible – speaking simultaneously]

MR MONTANA: The second paragraph – no, the third
20 paragraph is the annexure.

CHAIRPERSON: Ja.

MR MONTANA: The one where she says I called on her people to enquire about the property. This property was on the market, it was well-advertised, Chair, and it was a show house. So I think some of this – I think I want her to

file an affidavit precisely because she has got a lot of hearsay which are not – she only interacted with Ms de Beer towards the end and this affidavit does not speak to that, it speaks to the Siyangena matter, Chair, in court.

CHAIRPERSON: Yes. Okay, no, let us hang on. Is your objection to this sworn statement by Ms de Beer simply that you believe that its contents are not true or some of its contents are not true?

MR MONTANA: Chair, I think some of the contents are
10 not true.

CHAIRPERSON: Ja?

MR MONTANA: And the Commission ...[intervenes]

CHAIRPERSON: And you say you object because it is not an affidavit that was made to the Commission, it is an affidavit made for another purpose.

MR MONTANA: Yes.

CHAIRPERSON: Okay.

MR MONTANA: And now the Commission – because she did not file an affidavit here, Chair.

20 **CHAIRPERSON:** Ja.

MR MONTANA: The Commission, when I raise my objection, it was replacing reliance on a document that is not meant for here.

CHAIRPERSON: Ja.

MR MONTANA: It makes certain statements about me.

CHAIRPERSON: Ja.

MR MONTANA: I cannot call Mrs de Beer to come here and say – I need to question here, Chair, about these things that she says.

CHAIRPERSON: Yes.

MR MONTANA: Ja.

CHAIRPERSON: Just hang on one second. Did Ms Beer not come here?

ADV VAS SONI SC: She did come.

10 **CHAIRPERSON:** And testified and she confirmed this affidavit. That should cover it, Mr Montana. Or let me explain. You remember I said earlier on once the Commission is aware that somebody is in possession of information that may help it in its investigation it can obtain that information. So even if this sworn statement was made to whoever, whether the Hawks or Werksmans or whoever, if the Commission became aware of it and it thought that it might assist in its investigation it could obtain it.

20 Now it may be that in regard to some documents you say well, this person was not called here to give evidence and maybe we can put that aside for now, a situation where somebody could not come and testify but where somebody did come and testify, you would have, if you were given – and I assume you were given a 3.3 notice

in regard to her affidavit, you would have been entitled to apply for leave to cross-examine her and she could have been called back to face cross-examination.

MR MONTANA: No, Chair, I accept fully.

CHAIRPERSON: You accept that, ja.

MR MONTANA: Except one thing, Chair, that one of the things I raised was that these statements, the sworn statements for that particular case were even obtained through illegal means.

10 **CHAIRPERSON:** Okay.

MR MONTANA: And I am saying, Chair, that there is one issue ...[intervenes]

CHAIRPERSON: That is the duress or intimation you are talking about.

MR MONTANA: That duress and that is why the Commission, from a quality point of view...

CHAIRPERSON: Ja.

MR MONTANA: So you place reliance on a document.

CHAIRPERSON: Ja.

20 **MR MONTANA:** Some of the stories that are being said in here, Chair.

CHAIRPERSON: Ja.

MR MONTANA: So I think, Chair, that I am saying if she – even if it is one page confirmatory affidavit from her to say I confirm that my statement and – and that I can have

recourse on it, Chair, if I choose. I am not saying I will.

CHAIRPERSON: Ja.

MR MONTANA: Depending on how this whole matter unfolds. If I decide to exercise my rights, I should be able to, Chair.

CHAIRPERSON: Yes, no, okay, I think in regard to that, once she came and under oath said she confirms this, there is no need for her to do an affidavit because she has confirmed it under oath.

10 **MR MONTANA:** Okay.

CHAIRPERSON: So – but what you are free to do is to look at the contents and point out what you believe are flaws or what is untrue, that you will be free to do. But I do not think that just because there is no affidavit from her saying this is true would be a ground to object but with regard to what you say namely that on the information you have some of the people were intimidated or pressurised, there is no problem with you, if you got personal knowledge of that, leading evidence about how those
20 affidavits were – or documents were obtained or calling somebody to testify to that. But that is different from anything else. So I think that looking at what you are articulating, you should not have a problem with it being here but you can say as far as it may have been obtained illegally, I maintain that and I will lead evidence if I choose

to.

MR MONTANA: No, I accept your guidance, Chair.

CHAIRPERSON: You accept. Okay, alright. Okay, Mr Soni?

ADV VAS SONI SC: Then the next document, Chairperson, is a deed of sale relating to the Waterkloof property between ...[intervenes]

CHAIRPERSON: Maybe, Mr Soni, it will help if you start with the page.

10 **ADV VAS SONI SC:** Oh, sorry.

CHAIRPERSON: Ja, then you tell us what the document is, ja.

ADV VAS SONI SC: It is page 128 and it goes until the – the agreement itself goes up to page 130.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And that is an agreement of sale in regard to this problem which did not eventuate.

CHAIRPERSON: Ja, it seems to have annexure B, is that right?

20 **ADV VAS SONI SC:** That is so, Chair.

CHAIRPERSON: Does it not have annexure A, does it only have B?

MR MONTANA: Can I draw your attention to something, Chair?

CHAIRPERSON: Ja.

MR MONTANA: The document 128, I accept it, Chair.

CHAIRPERSON: Ja.

MR MONTANA: I accept that, Chair, and I think it goes to 132.

CHAIRPERSON: 122?

MR MONTANA: If I am right, Chair.

CHAIRPERSON: Okay.

MR MONTANA: I think annexure A ...[intervenes]

CHAIRPERSON: I am sorry, when it starts at 128, so it
10 cannot go to 122. 132 you mean?

MR MONTANA: 132, Chair.

CHAIRPERSON: Okay.

MR MONTANA: I do not have a problem with that.

CHAIRPERSON: Okay. No, that is fine. Mr Soni?

ADV VAS SONI SC: Then there is at page – 131 is
annexure B to that.

CHAIRPERSON: 133 you mean?

ADV VAS SONI SC: The 131 to 132, Chairperson.

CHAIRPERSON: No, he says he has no problem with that.

20 **ADV VAS SONI SC:** Oh, sorry.

MR MONTANA: I do not have a problem with it.

CHAIRPERSON: Ja, so we are at 133 now.

ADV VAS SONI SC: 133, Chairperson, and 134 is an
email that Ms de Beer sent to neighbours after she handed
the keys to Mr Montana.

CHAIRPERSON: That is fine, even if you do not explain, he already knows which ones he has a problem with. Have you got any problem with these two?

MR MONTANA: Chair, in fact, I will not object, I am happy with it.

CHAIRPERSON: You are happy with this.

MR MONTANA: Let us proceed with that.

CHAIRPERSON: Okay.

MR MONTANA: But let me make one quick point, Chair.

10 These documents and the affidavit, you can see that Ms de Beer, she believed that she had entered into a property transaction with me even though in one of her emails – she uses beautiful words, hey?

“I would like to inform you that I have sold my house to Mr Lucky Montana, currently of PRASA. He is a very nice gentleman and will take full responsibility of the property.”

And goes on to say that. Now let us go back to this affidavit.

20 **CHAIRPERSON:** You of course not objecting to being referred to as a nice gentleman.

MR MONTANA: Well, Chair, but you can see that these are two worlds, is it not, the same person says – she says I am this wonderful gentleman, tells the neighbours, okay? But you can see, Chair, that she also does not have actual

understanding of the issues because I am saying her own sworn statement or affidavit, you can see because she only met me once.

CHAIRPERSON: Ja.

MR MONTANA: It is based on hearsay.

CHAIRPERSON: Ja.

MR MONTANA: But what I am simply saying is that when I take this issue on at a later stage, I am going to demonstrate that we are dealing with two. It is either we
10 are going to deal with one person with two characters.

CHAIRPERSON: Ja, not that ...[intervenes]

MR MONTANA: I am nice guy and I am a criminal on the other one.

CHAIRPERSON: Yes, okay. You have no problem. Then the next one is page 135. Mr Soni?

MR MONTANA: 135?

CHAIRPERSON: Those are notes again.

MR MONTANA: I object the notes, Chair.

ADV VAS SONI SC: Yes, Chair.

20 **CHAIRPERSON:** Those are notes, they go up to what?

ADV VAS SONI SC: They go up to page 143, Chair.

CHAIRPERSON: 143.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, he objects to the notes. And then there is the sworn statement of – oh, continue, Mr Soni?

ADV VAS SONI SC: Yes, sorry, Chairperson, page 144 and 145 is the statement of Mr Green.

CHAIRPERSON: You have no problem with that?

MR MONTANA: No, I do not have, Chair.

CHAIRPERSON: Ja. With regard to Mr Green, Mr Soni?

ADV VAS SONI SC: He also testified, Chair.

CHAIRPERSON: Yes, I know, I remember he did testify. Mr Montana has mentioned him I think yesterday twice, if I am not mistaken and I forgot to say this, I am under the
10 impression that he is the witness who left on the basis that he should still come back to clarify something. Will you team just check?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, so that if there was something that he was meant to come back and clarify, it is no left hanging.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I seem to think that as we were finishing I – we talked on the basis that he would still come back at
20 some stage.

ADV VAS SONI SC: Chairperson, maybe – and this is not to say we will not do that. Mr Green when I met him on the day he gave evidence, he told me that he had been suffering from cancer for some period and could not remember things.

CHAIRPERSON: Okay, okay, no, no, that ...[intervenes]

ADV VAS SONI SC: But that does not mean we will not, but I am just placing it on record.

CHAIRPERSON: That is fine, ja.

ADV VAS SONI SC: So that we know that that is a possibility.

CHAIRPERSON: No, that is fine.

MR MONTANA: He is the man who told you, Chair, that what Mr Montana is doing is not unusual in the property
10 market.

CHAIRPERSON: Yes, ja. Yes. No, no, that is fine. So let us check simply because we should not have a situation where something was left hanging and we do not follow up. Okay, alright.

ADV VAS SONI SC: Then page 146, Chairperson, there is an email from Mr Green to obviously his firm but in relation to the agreement that Mr Montana ...[intervenes]

CHAIRPERSON: Well, the one at 146 is empty or is it? Or what is 146?

20 **ADV VAS SONI SC:** It is an email from Mr Green.

CHAIRPERSON: Oh, does it go to 147?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Oh, okay. From Mr Green to who?

ADV VAS SONI SC: ...[Indistinct] Chairperson saying that he is attaching the document or the agreement that had

been entered into.

CHAIRPERSON: Okay. Does he attach ...[intervenes]

ADV VAS SONI SC: He doesn't attach the agreement
Chairperson.

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

MR MONTANA: I think he is referring to the Deeds of
Sale.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: But that email you have no problem
10 with?

MR MONTANA: No Chair I don't.

CHAIRPERSON: No problem, Mr Soni.

ADV VAS SONI SC: And then page 147 is a second email
from him which deals with a letter seemingly sent by Mr
van der Walt.

CHAIRPERSON: No problem Mr Montana?

MR MONTANA: No, no, Chair, no, no.

CHAIRPERSON: Okay. 148?

ADV VAS SONI SC: 148 is a repetition of what was 146
20 as well.

CHAIRPERSON: Then there's no objection?

MR MONTANA: No, no objection Chair.

CHAIRPERSON: Ja. And then 149 is crossed out, or
what is the story?

ADV VAS SONI SC: Sorry, 149 is the same thing as 146

Chair.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: And then ...[intervenes]

CHAIRPERSON: 150?

ADV VAS SONI SC: 150 is from Mr van der Walt to Mr Green.

CHAIRPERSON: No problem with that Mr Montana?

MR MONTANA: No objection Chair.

CHAIRPERSON: No problem, ja?

10 **ADV VAS SONI SC:** And 151 is the bank letter confirming the payment that is referred to on page 150.

CHAIRPERSON: No problem with that?

MR MONTANA: No, no problem with that.

CHAIRPERSON: No problem, okay.

ADV VAS SONI SC: Then 152 Chairperson is the agreement between Mr ...[indistinct] and Mr van der Walt.

CHAIRPERSON: 152 to what page?

ADV VAS SONI SC: 155.

20 **CHAIRPERSON:** Okay, that's offer to purchase which was accepted.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, no problem with that Mr Montana?

MR MONTANA: No, not a problem Chair.

CHAIRPERSON: No problem, and 156?

ADV VAS SONI SC: 156 is merely the certificate by the

CIPC.

CHAIRPERSON: Okay, no problem with that?

MR MONTANA: No problem Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then page 157 Chairperson are – or from 157 but we just deal with each one, are emails by the sellers to Mr Montana, Mr Green and other people associated with the property.

CHAIRPERSON: No problem?

10 **MR MONTANA:** No problem Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: 158 is a continuation of that email, 159 is an email relating to a progress report sent to various people including Mr Montana Chair.

CHAIRPERSON: No problem with that?

MR MONTANA: No objection Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: 160 is the red clearance figures.

CHAIRPERSON: No problem?

20 **MR MONTANA:** No problem Chair.

ADV VAS SONI SC: 161 is the electrical compliance certificate Chairperson.

CHAIRPERSON: No problem?

MR MONTANA: 161?

CHAIRPERSON: 161 ja. No problem.

ADV VAS SONI SC: Then 162 is the account by the attorneys who did the transfer Chairperson.

CHAIRPERSON: No problem?

ADV VAS SONI SC: It is an account sent to Precise Trade.

CHAIRPERSON: H'm. I think Mr Montana is looking at it.

MR MONTANA: I am looking Chair sorry at the – this is 163?

CHAIRPERSON: 162.

10 **ADV VAS SONI SC:** 162.

MR MONTANA: Oh 162 Chair, yes no I am happy with that Chair.

CHAIRPERSON: Okay, then 163?

MR MONTANA: I am happy with that chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: 164 is a further email from Mr Green.

CHAIRPERSON: Well maybe Mr Soni even if you don't say who it is from he knows them, he will just say no objection until we come to where he has an objection. If
20 you will just mention the page, 164 there is no objection Mr Montana?

MR MONTANA: No Chair, no objection.

ADV VAS SONI SC: 165?

MR MONTANA: No objection.

CHAIRPERSON: No objection. 166?

MR MONTANA: No objection Chair.

CHAIRPERSON: 167?

MR MONTANA: No objection Chair.

CHAIRPERSON: 168

MR MONTANA: No objection Chair.

CHAIRPERSON: 169?

MR MONTANA: No objection Chair.

CHAIRPERSON: Up to ...[intervenes]

MR MONTANA: I think document goes further Chair.

10 **CHAIRPERSON:** Up to ...[intervenes]

ADV VAS SONI SC: Up to 179 Chairperson.

CHAIRPERSON: Up to 179. Is that fine Mr Montana, up to 179?

MR MONTANA: Ja Chair, I think until in fact until, I don't have a problem until 187.

CHAIRPERSON: Until 187?

MR MONTANA: Yes, Chair but I have got one, okay until 187, but there's something, I think the pages do not follow each other Chair. I don't know after 187, until 187 I don't
20 have any objection Chair.

CHAIRPERSON: Until?

MR MONTANA: 187.

CHAIRPERSON: You have no problem.

MR MONTANA: I don't have any objection Chair.

CHAIRPERSON: Okay.

MR MONTANA: There's a page which I don't believe it goes there Chair.

CHAIRPERSON: The pages then skip from 187 to 193.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Is there something missing?

ADV VAS SONI SC: Things were put in that didn't belong to this Chairperson.

CHAIRPERSON: Oh.

ADV VAS SONI SC: ...[Indistinct]

10 **CHAIRPERSON:** Oh, I think what should, if that is the case a page should be put in here with a note to alert whoever is going through this.

ADV VAS SONI SC: You're quite right Chair, mine has that, I don't know why it is not in yours.

CHAIRPERSON: Mine doesn't have, yours Mr Montana doesn't have any note saying ...[intervenes]

MR MONTANA: Chair I am shocked with this document.

CHAIRPERSON: Ja?

MR MONTANA: These things here you know sometimes
20 you say God works in mysterious ways.

CHAIRPERSON: Ja.

MR MONTANA: This document Chair you see and I think it comes from a Werksmans report.

CHAIRPERSON: Which document are you looking at?

MR MONTANA: The one Chair after 187, after – you

remember I accepted 187.

CHAIRPERSON: Ja.

MR MONTANA: And then there is this document which I don't think it belongs here Chair.

CHAIRPERSON: 193?

MR MONTANA: Is it 193?

CHAIRPERSON: My next document is page 193.

MR MONTANA: So you don't have this ...[intervenes]

CHAIRPERSON: I think it is notes, it is notes I think.

10 **MR MONTANA:** There is a document Chair talking about Dr Daniel Ntimkulu, Joseph Pomola, Mr Montana.

CHAIRPERSON: What page is it marked, what is the page number?

MR MONTANA: Chair I don't think it belongs here, it doesn't fall in that number, it is written S4, I think it belongs to a different document.

CHAIRPERSON: Oh okay.

MR MONTANA: But you know what it is Chair?

CHAIRPERSON: H'm?

20 **MR MONTANA:** It is a document from Werksmans their allegations that they were making on some of the memorandums that we prepared, so these are part of the documents that are being ...[intervenes]

CHAIRPERSON: Has it got a heading?

MR MONTANA: Chair it doesn't even have a heading, it

starts with Dr Ntimkulu confirms unreservedly.

CHAIRPERSON: Is it, does it look like a continuation from another document?

MR MONTANA: No it is not a continuation Chair.

CHAIRPERSON: Oh, is it one page?

MR MONTANA: Yes, so it doesn't belong here, I don't think it belongs here.

CHAIRPERSON: Yes.

MR MONTANA: I don't think it belongs here but I am just
10 simply saying that we should take it out Chair, but
...[Indistinct] is suing me, what is said in here Chair.

CHAIRPERSON: Yes, can I see that page? She will take it. Oh, it is my registrar.

MR MONTANA: And my ...[indistinct] you will find this particular document Chair.

CHAIRPERSON: Okay. Okay it is a document, it is a page that is marked 11 at the bottom to indicate that it is page 11 of a document, at the top there is paragraph 5.6.3, it says Dr Ntimkulu confirmed unreservedly that the amount
20 of R17 628 118,59 is due and payable in terms of the above two contracts because the company had successfully executed the material management programme and the data cleansing programme. It is written by ...[indistinct] Commissioner. I'm sure Mr Soni would like to see it.

ADV VAS SONI SC: I would like to see it but I don't know

what it is about, it is certainly not ...[indistinct – dropping voice.

CHAIRPERSON: Ja, okay. It does say PRASA at the top.

ADV VAS SONI SC: Yes.

MR MONTANA: So you will see my annexures on the various documents that were prepared and I annexed them to my affidavit it deals, this page comes from that document and I know all the affidavits on the PRASA matter, and the Rule 3.3 Notices given to me, these
10 documents were not tabled before this Commission Chair.

CHAIRPERSON: H'm.

MR MONTANA: So you will understand why I feel so aggrieved and unhappy, because I see these things, documents that belong somewhere come into here, but for now Chair for us to move on I am just saying that you know God is kind Chair, [speaking in vernacular] to see what is happening, but I don't want to do that [speaking in vernacular].

CHAIRPERSON: Ja.

20 **MR MONTANA:** Chairperson, so I think Chair we can proceed to the next one, 193.

CHAIRPERSON: That's fine. Yes, so is it ...[intervenes]

ADV VAS SONI SC: I am told that it belongs to another file Chair.

CHAIRPERSON: To another file?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Another PRASA file?

ADV VAS SONI SC: SS4 yes.

CHAIRPERSON: Yes, okay, alright, okay, but then there should be a note here that – a page that ...[intervenes]

ADV VAS SONI SC: Chairperson may I give you mine, I won't need it. It says exactly what it is from page 188 to 192.

CHAIRPERSON: Okay, that's fine.

10 **ADV VAS SONI SC:** It just says blank pages ...[indistinct dropping voice]

CHAIRPERSON: Okay. So it says blank page non-relevant pages removed

ADV VAS SONI SC: Yes..

CHAIRPERSON: Okay it is there, a few pages in that, okay, alright, let's continue.

ADV VAS SONI SC: The next document Chairperson is Annexure OR4 and that is from page 193 to 198, that is again a commentary on the index.

20 **CHAIRPERSON:** Those I know.

ADV VAS SONIC SC: Yes.

CHAIRPERSON: Ja. Mr Montana has problems with notes.

ADV VAS SONI SC: Yes.

MR MONTANA: 193 Chair I do not accept, I reject Chair.

CHAIRPERSON: Ja, no that is fine. Continue.

ADV VAS SONI SC: Then Chairperson 199 to 205 is an affidavit from the transferring attorney in the Hurlingham property.

CHAIRPERSON: Okay, any objection to that?

MR MONTANA: No objection to that Chair.

CHAIRPERSON: Sorry?

MR MONTANA: No objection Chair.

CHAIRPERSON: No objection, okay, alright.

10 **ADV VAS SONI SC:** Then page 206 to 209 is the offer to purchase made by Mr Montana to the owner of Montrose Avenue.

CHAIRPERSON: No objection?

MR MONTANA: No, no that is correct Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Then page 210 is a confirmation from Investec Bank that Midtown Brace had paid R11.5million to the account of the transferring attorney.

CHAIRPERSON: Is that a one page or ...[intervenes]

20 **ADV VAS SONI SC:** Page 210, it is just one page.

CHAIRPERSON: Oh, no objection.

MR MONTANA: I am happy with that Chair.

CHAIRPERSON: Happy with that okay.

ADV VAS SONI SC: Then page 211 Chairperson is confirmation that the transfer had been registered in the

Deeds Office on that date.

CHAIRPERSON: No objection?

MR MONTANA: I am happy Chair with it.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Page 212 to 215 is an offer to purchase from Mr Smith on behalf of the Minor Property Trust to the owner of 12 Montrose Avenue.

CHAIRPERSON: No objection?

MR MONTANA: No, no Chair, no objection at all.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: Page 216 is a letter from Mr Smith to other people in his agency – sorry Mr Green ...[intervenes]

CHAIRPERSON: From Mr Louis Green.

ADV VAS SONI SC: Mr Green confirming that an offer had been received from Mr Montana.

CHAIRPERSON: No objection?

MR MONTANA: No, not at all Chair.

CHAIRPERSON: H'm.

20 **ADV VAS SONI SC:** Then page 217 is two emails sent by seemingly the secretary of the trustee to Mr Green and cc'd to Mr Montana.

CHAIRPERSON: No objection?

MR MONTANA: No objection Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Then at page 218 to 223 is an offer to purchase made on behalf of the Minor Property Trust.

CHAIRPERSON: No objection?

MR MONTANA: No objection Chair.

CHAIRPERSON: You said up to what page Mr Soni?

ADV VAS SONI SC: Sorry page 222 Chair, sorry page 221 and then page 222 is the minutes of the trust confirming that Mr Smith had been authorised to make the offer.

CHAIRPERSON: Okay, and then?

10 **ADV VAS SONI SC:** And then page 223 to 226 there's a further offer to purchase made by Mr Montana.

CHAIRPERSON: No objection?

MR MONTANA: I thought Chair the ...[intervenes]

CHAIRPERSON: Offer to purchase. I don't think you will have any objection to that?

MR MONTANA: Oh no Chair, I don't have an objection Chair, I was confusing it with some other documents.

CHAIRPERSON: Ja, okay.

20 **ADV VAS SONI SC:** And then page 227 is confirmation by Investec Bank that payment had been made to the trust account of the transferring attorney by Precise.

CHAIRPERSON: No objection?

MR MONTANA: For R2million is it?

ADV VAS SONI SC: For R2million.

MR MONTANA: For R2million.

CHAIRPERSON: No objection.

MR MONTANA: I am happy with that Chair.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Then page 228 is a letter read into an offer to purchase made by Mr van der Walt.

CHAIRPERSON: No objection?

MR MONTANA: No maybe Chair.

ADV VAS SONI SC: And then page 231 is a further letter from Mr ...[intervenes]

10 **CHAIRPERSON:** I am sorry, you said 231, what about 230, is 230 part of what we have dealt with.

ADV VAS SONI SC: 230 is seemingly part of the letter from Mr van der Walt.

CHAIRPERSON: Oh, okay. Okay, 231?

ADV VAS SONI SC: 231 Chairperson is a further letter from Mr van der Walt to the transferring attorney asking for more time.

CHAIRPERSON: That's 231 to 233?

ADV VAS SONI SC: As you please Chair.

20 **CHAIRPERSON:** No objection.

ADV VAS SONI SC: From 233 yes.

CHAIRPERSON: Ja. 234?

ADV VAS SONI SC: 234 is a letter from the transferring attorneys to Mr van der Walt.

CHAIRPERSON: Even if you don't say he has seen it, ja,

234 to 236 you have no objection.

MR MONTANA: No objection Chair.

CHAIRPERSON: Ja, okay, 237?

ADV VAS SONI SC: And then 237 is an email from Mr van der Walt to the attorney.

CHAIRPERSON: Ja, okay no objection.

MR MONTANA: No objection Chair.

ADV VAS SONI SC: And then 238 is again a transfer, a letter from Mr van der Walt to the attorney.

10 **CHAIRPERSON:** 238 to 240 you have no problem?

MR MONTANA: No problem Chair.

CHAIRPERSON: 241, is – have you got no objection to that?

MR MONTANA: No Chair, in fact I think when I look – when I look back Chair, I go back, I think Chair when you look back, when you move forward all the other documents remaining there Chair are acceptable to me.

CHAIRPERSON: The ones that are remaining?

MR MONTANA: The ones that are remaining until the last
20 page, page 315 I think, 317 rather Chair, 317.

CHAIRPERSON: Ja, they are acceptable?

MR MONTANA: Yes Chair.

CHAIRPERSON: Okay, okay, alright, so the ones that have been identified as objectionable if I recall correctly is the preliminary report and the notes, is that correct?

MR MONTANA: That is correct Chair.

CHAIRPERSON: Ja.

MR MONTANA: And you can see Chair ...[intervenes]

CHAIRPERSON: Ja, there are different notes but all the notes ...[intervenes]

MR MONTANA: There are different notes Chair and all of them are moving from - and that is why we are left with one issue Chair.

CHAIRPERSON: Yes, yes.

10 **MR MONTANA:** We are in agreement with all these documents.

CHAIRPERSON: Yes, it is just the notes.

MR MONTANA: The notes are written on the basis, on the premise that these properties were funded by TTM and I am saying that is false and I am surprised Chair, by the way I didn't make this point, the evidence – I am actually surprised Chair, because some of these documents that have now gone through they confirm a completely different version, for example the Investec account of R2million they
20 confirm the true story, the letter from Mr van der Walt, from Mr Bredenkamp their attorneys it actually says I am under instruction, the instruction of my client, to do the following things.

Now if that is the case why would for example the Commission then ignore those things and write the kind of

note that has been written, that is at the heart of my story, those things, that is at the heart of my story Chair, and I think because there is no objection we are not fighting over this one, we then must get Chair to the heart of this issue.

CHAIRPERSON: No, no, no.

MR MONTANA: Who funded these properties and we resolve this issue once and for all today so that when we all leave here we know that Mr Montana was bright, he was involved in corruption for these properties were funded and
10 Chair I am here to deal with this issue now.

CHAIRPERSON: Ja, no, no, no that is fine. So the one thing at least that is clear is there is no objection to any documents other than the preliminary report and the notes.

MR MONTANA: Yes.

CHAIRPERSON: Now my understanding of the attitude you took yesterday Mr Soni is that you were quite happy to leave aside the preliminary reports.

ADV VAS SONI SC: Yes.

CHAIRPERSON: For purposes of this.

20 **ADV VAS SONI SC:** Of the – of putting things on record
Chairperson.

CHAIRPERSON: Ja, ja, okay. Now what do you say about the notes? The objection to the notes, and I think the objection is really that you were saying well you were saying that the notes are based at a certain basis, and you

say if there was somebody who comes and testifies or depose to an affidavit and says what is said in the notes then you would have your opportunity to apply to cross-examine them and so on, is that correct?

MR MONTANA: Chair you remember when I objected the fundamental issue has to do with how these things are funded.

CHAIRPERSON: Ja.

MR MONTANA: And the notes which informed Mr Soni's
10 thing was that this in fact we know this had been funded by TTM. TTM Chair, or /Siyangena and I am saying Chair that with all the evidence we have dealt with the – bar the notes that had been written ...[intervenes]

CHAIRPERSON: Ja, you are happy to deal with.

MR MONTANA: The evidence points that here is a company called Precise, it has got all of these activities in all these investors and everything, okay now the notes ignore all of that, all of that evidence, even in that statement, there is almost R40million in that statement. It
20 then wants to extract not even based on the statement, on the notes, actually one of the notes says Mr Van der Walt says that that property was funded by TTM, so Mr van der Walt doesn't say that Chair ...[intervenes]

CHAIRPERSON: Let me – let's pause there, do you need the notes for your process?

ADV VAS SONI SC: We don't need the notes Chair, its inferences to be drawn from the documents.

CHAIRPERSON: Ja, so they can be pulled out, they can be ignored.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, okay.

MR MONTANA: But Chair you get the principle of what I say, it is easy to say we can ignore that.

CHAIRPERSON: Yes.

10 **MR MONTANA:** But I am saying Chair ...[intervenes]

CHAIRPERSON: Ja, but you are if I understand you correctly you are saying these notes paint a certain picture or are based on certain information, actually you would be happy if they were not here, so from what Mr Soni is saying he seems to say well actually if the notes are creating a problem they can be taken out.

ADV VAS SONI SC: Absolutely Chair.

CHAIRPERSON: Yes, they can be taken out and then we continue, we can put questions to you based on the
20 documents that you have no objection to.

MR MONTANA: Chair that is not – I am not asking for a concession on this issue.

CHAIRPERSON: Ja.

MR MONTANA: Whether the documents are withdrawn or not Chair you have said that the next few days you want to

focus on this property issue. In the minds of the nation the issue is the properties have been bought, and they are interested in the public entity, PRASA, that if a former CEO is involved in corruption it is a big problem and they have got a legitimate right and we know that reports have been made, statements have been made, that no, no, no these things have been paid for by TMM and Siyangena, okay.

The Commission repeats that, now I have dealt with the procedural part which is the fact that who must do that,
10 the Commission must not interrogate or enter arena and all of those things Chair and you can hear Chair that I spoke to lawyers who were debriefing me, that's why some of the language ...[intervenes]

CHAIRPERSON: Oh, may you did introduction to law 101 crash course.

MR MONTANA: Crash course.

CHAIRPERSON: Admissibility of evidence.

MR MONTANA: Yes Chair, now Chair my objection in a way caused us to come to a central issue of all these why
20 we are dealing with these properties.

CHAIRPERSON: Yes.

MR MONTANA: Who paid and the selection of documents Chair, the way they have been lined up, okay, you know some of the documents that are said there – if Mr Soni were to go back or the legal team were to go back

...[intervenes]

CHAIRPERSON: No but I understand what you are saying Mr Montana, but what Mr Soni's position is, and he is going to tell me if I misunderstand his position, he is creating the position that says these notes it is not really so important that they be here, my understanding of them was that they were for convenience, that was my understanding of them. If you have an objection to them he is happy that they be taken out and then we proceed, we proceed from there, so
 10 I don't expect you to be aggrieved with that, because you are objecting to them so he says look let's take them out and let's continue then there should be no problem.

MR MONTANA: Chair you see part of the problem we are dealing with – I am a fundamentalist Chair in the true sense of the word, I go for maximum effects but this is not about that, it is about the soft principle. I am saying that a statement was made Chair, and I need to ask, perhaps I should ask I know I am here to answer questions, let me ask the question through you Chair, now withdrawn is fine,
 20 I think they showed the biasness and everything Chair and trying to direct this in a particular fashion, but the fundamental issue that made me fight Chair was when in those statement the Commission or those notes say – and this was when of course Mr Soni is making the statement, we know, now I want to be told – I don't want to be taken

on a journey Chair when I see where this journey is going to, and I want to cut the chase Chair, instead of cutting the chase let's say it, does this Commission, does Mr Soni as he is standing there can tell this Commission with certainty that TMM or Siyangena paid for the properties, now this I know, there are two types of properties Chair, my properties and Mr Chair ...[intervenes]

CHAIRPERSON: Hang on ...[intervenes]

MR MONTANA: I want to go back there Chair
10 ...[intervenes]

CHAIRPERSON: Hang on, you see when Mr Soni says these notes can be taken it does not prevent that issue being dealt with whether immediately or in due course. It does not prevent – it is not like that issue that you think you say is fundamental it is not put under the carpet. All it means is at least as far as you had raised an objection to certain documents that objection then falls away once these notes have been taken out. Then we can proceed.

MR MONTANA: Yes Chair but I think the moment has
20 arrived Chair.

CHAIRPERSON: Ja.

MR MONTANA: For me and everyone.

CHAIRPERSON: Okay alright.

MR MONTANA: And I think let us confront it Chair.

CHAIRPERSON: No, no that is fine. Mr Soni I suggest that

they be taken out for purposes of progress.

ADV SONI SC: Yes, no, no I have no difficulty.

CHAIRPERSON: Is that alright? And where they were pages can be put in that says what was taken out.

ADV SONI SC: Yes.

CHAIRPERSON: Ja. Okay alright. Well why do you not we practically that then we proceed. The first ones are from what page to what page?

ADV SONI SC: They are from 1 to 33 Chairperson.

10 **CHAIRPERSON:** Sorry.

ADV SONI SC: Page 1 to 33.

CHAIRPERSON: Well the – there is the preliminary report.

ADV SONI SC: Yes.

CHAIRPERSON: Well the – there is the index and then the preliminary report starts at page 3, is that right?

ADV SONI SC: Chairperson as I understand it Mr Montana also objects to the main report.

CHAIRPERSON: Where is the main report?

20 **ADV SONI SC:** It starts at 4 to – which starts at page 4 and goes up to page 33.

CHAIRPERSON: Well page 3 says Preliminary Report.

ADV SONI SC: Yes.

CHAIRPERSON: Is page 4 not part of the Preliminary Report?

ADV SONI SC: Yes.

CHAIRPERSON: Yes but you just said the – I thought you said permanent or final report.

ADV SONI SC: No, no I said he – he seems to object to the whole part of that – that part of the report.

CHAIRPERSON: Well he objects to the whole Preliminary Report.

MR MONTANA: Yes indeed Chair.

CHAIRPERSON: Yes. And the Preliminary Report starts at page 3, is that right?

10 **ADV SONI SC:** Yes.

MR MONTANA: Yes.

CHAIRPERSON: And it goes up to what page?

ADV SONI SC: Up to page 33.

CHAIRPERSON: Up to page 33.

ADV SONI SC: Yes.

CHAIRPERSON: Okay so – okay that we take out and then – and then the notes what page 34?

ADV SONI SC: Page 34 to 39.

20 **CHAIRPERSON:** Okay. Because your position is that these do not make a difference to – to..

ADV SONI SC: To the evidence

CHAIRPERSON: To the issues.

ADV SONI SC: That you need to hear Chair.

CHAIRPERSON: Ja. Okay.

ADV SONI SC: Then 99 – oh sorry 98 to 104.

CHAIRPERSON: Yes.

ADV SONI SC: Then 135 to 143.

CHAIRPERSON: Yes.

ADV SONI SC: And then 193 to 198.

CHAIRPERSON: Was that – those were the last notes?

ADV SONI SC: As you please Chairperson.

CHAIRPERSON: Okay I think – I think we have covered them.

MR MONTANA: There is one issue outstanding Chair.

10 **CHAIRPERSON:** Ja.

MR MONTANA: The issue about the – I thought we said we found also in addition to the letter the annexure we also find the affidavit from ...

CHAIRPERSON: Oh – oh the affidavit. Can I see the affidavit and Mr Montana can be given a copy?

ADV SONI SC: Yes.

CHAIRPERSON: Did you get a chance to read the affidavit Mr Soni to see whether it says what Mr Montana says it says?

20 **ADV SONI SC:** No I can – I can take just to save time.

CHAIRPERSON: Well what you have got – what you have got is – excuse me – is – is an application brought by Siyangena Technologies Pty Limited as first applicant TMM Holdings Pty Limited as second applicant and MJA Ferreira as third applicant in terms of Rule 3.4 and 11.1 of the Rules

of the Commission of – and they ask for leave to cross-examine Mr Oellerman in relation to the contents of his affidavits and versions and reports with reference to the subject matter of the relationship and or alleged relationship between the applicants and PRASA and all the applicants and Mr Lucky Montana's involvement in alleged property transactions and the relationship between the applicants and attorney Riaan Van Der Walt and or alleged payments directly or indirectly from the applicants to Van Der Walt and
 10 or Precise Trade and or Lucky Montana. And Rule 2 – payer 2 is Rule 11.1 for the hearing of any further evidence implicating the applicants regarding or information with matters pertaining to or concurrent with the facts in the High Court application under case number X be held in camera alternatively be postponed until such time that the applicants have been granted consent to cross-examine any such witnesses implicating the applicants on such allegations.

Okay so that – that was an application for leave to cross-examine as well as an application for the
 20 postponement of – or for the hearing of evidence implicating the applicants to be held in camera alternatively to be postponed until such time as the applicants have cross-examined certain witnesses.

Okay now the – that application – let us say notes of motion in the affi – it is a 00:08:31 an affidavit by Mr Thomas

Andreas Dubeck.

Have you had a chance to check whether the affidavit says what Mr Montana says?

ADV SONI SC: Chairperson I have – I can only refer to what I think the relevant parts of the affidavit are.

CHAIRPERSON: Ja.

ADV SONI SC: And I think it starts at page – at page 30 the red numbers 30 and at paragraph 69 at the bottom of that page.

10 **CHAIRPERSON:** Yes.

ADV SONI SC: He says: I turn now to deal – perhaps you should read it Chairperson.

CHAIRPERSON: Ja.

ADV SONI SC: For yourself and then...

CHAIRPERSON: And – yes you can read ja.

ADV SONI SC: And perhaps Mr Montana.

CHAIRPERSON: I thought you were going to read Mr Soni.

ADV SONI SC: Oh sorry.

20 **CHAIRPERSON:** I thought you were offering – I thought you were offering to read it.

ADV SONI SC: I turn now to deal with the report of Mr Clinton Oellerman and the evidence he will probably lead on the 2nd of July 2020 and reasons for cross-examining Mr Oellerman.

Paragraph 70 – despite neither of the first two

applicants receiving any notice from the commission's legal team and I submit that both first and second applicants were entitled to a notice. The applicants applied for cross-examination of Mr Oellermann's evidence as it is envisaged to be led at present on the following basis.

70.1 Mr Oellerman does not contextualise at least within reasonable measures his reports – his report.

70.2 Mr Oellerman fails to report that Siyangena commenced the execution of phase 1 ISMS several years
10 prior to the date on which it commences with his report.

70.3 Mr Oellerman fails to explain in anywhere whatsoever what the benefit from Mr Montana was or would have been with regards to 70.3.1 the Waterkloof property, 70.3.2 the Sandhurst property,

CHAIRPERSON: I am sorry – I am sorry Mr Soni. The only reason I was asking for that part is simply to see whether it could be the affidavit that Mr Montana was talking about. Would you know Mr Montana whether this is the affidavit you were referring to?

20 **MR MONTANA:** Yes Chair and I want to read the – I think that Chair is ...

CHAIRPERSON: The part about payment.

MR MONTANA: From page 27 of that affidavit Chair.

CHAIRPERSON: Ja.

MR MONTANA: I just ...

CHAIRPERSON: But I do not want you to read the whole thing.

MR MONTANA: Yes.

CHAIRPERSON: I just want the...

MR MONTANA: Yes Chair.

CHAIRPERSON: The parts there – if there is a part that says they never paid or what.

MR MONTANA: Yes Chair it is – it is – I just picked it up – I just lost it again as you spoke to me Chair. And I wanted to
10 read that part.

CHAIRPERSON: Ja.

MR MONTANA: Where he says – sorry Chair. Okay let me find it again quickly. Where he says on the CFO of this company and that we have never made –

CHAIRPERSON: That would be at the beginning.

MR MONTANA: Ja – no, no towards the end Chair.

CHAIRPERSON: Towards the end.

MR MONTANA: Towards the end I think from page 25 I will just find it again Chair. I just picked it up. So he starts – he
20 starts in fact from page 27 and it goes for example Chair to page 28 and 70.9.1 on page 28 the – Mr Tom – Mr Tom – the deponents Andreas Dubeck says 70.9.1 Chair can you see that?

CHAIRPERSON: Yes I can see that.

MR MONTANA: He says: None of the payments mentioned

in the report of Mr Oellerman were made from a TMM bank account. I am the Chief Financial Officer of TMM and Siyangena and I can confirm the aforesaid and I will put Mr Oellerman to the proof thereof if and when allowed an opportunity to do so.

Now Chair the bank account from which the TMM payments and they put it in – were made it is not a bank account opened by TMM or any of his officials or any of his employees in fact it seems as if it was – and I think Chair it
 10 seems as if it was a cash Money Market account opened for M on behalf of Loubser Van Der Walt Attorneys at Investec Bank. To illustrate the aforesaid I append hereto marked Annexure TD22 a copy of what seems to be a printout of a bank statement reflecting TMM payments.

And Chair it continues – it continues Chair.

CHAIRPERSON: Ja.

MR MONTANA: So.

CHAIRPERSON: Ja that is the part you were talking about.

MR MONTANA: So that is the part I am talking about Chair
 20 and now if this affidavit Chair – I am saying.

CHAIRPERSON: Ja. Ja.

MR MONTANA: If this affidavit was before the commission and Mr Soni said what he said then we are left with one question Chair. Let us put the bank account – not the notes because currently the noise is about the notes written TMM.

CHAIRPERSON: Ja.

MR MONTANA: The – TMM and Siyangena they were never paid Precise Trade these amounts.

CHAIRPERSON: Ja.

MR MONTANA: But it seems we are dealing with notes on a money account. Let us put it on the table Chair and deal with the matter.

CHAIRPERSON: Ja.

MR MONTANA: So I think Chair the – I do not know
10 because this was an application to you Chair.

CHAIRPERSON: Ja this was an application.

ADV SONI SC: Yes.

CHAIRPERSON: Which was brought by

MR MONTANA: Exactly Chair.

CHAIRPERSON: By them but...

MR MONTANA: But you can see Chair considering.

CHAIRPERSON: But – but what they are saying is relevant.
Ja.

MR MONTANA: Chair all is actually profound because it
20 changes the foundation from which I have been sitting here
for the past two days answering questions about my
properties. Because I am here to answer and grill that the
TMM and Siyan – I have said I paid for my properties and for
those that I owned and I have entered into partnership and
they say the money comes from TMM where I have entered

into partnership and where Riaan Van Der Walt bought his own properties they say it came from TMM.

CHAIRPERSON: Ja.

MR MONTANA: Now here is a CFO Chair under oath is saying no we have never made such a payment.

CHAIRPERSON: Ja.

MR MONTANA: Now if this affidavit has been with the commission since July 2020 Chair there is no way in which – why it was not shared with me number 1 and number 2 it was
10 – it would not have been possible that for Mr Soni and the commission not to be aware of this important thing unless if they have got evidence and say we have got the account from TMM it contradicts what you are saying. Then we have got a story Chair.

CHAIRPERSON: No, no, no what I can tell you Mr Montana is that the file that has been given here to me has got my notes because this was an application by these entities plus Mr Ferreira for leave to cross-examine Mr Oellerman which I made in February – early in February this year. I do not
20 know whether that means that is when it – I became aware of it for the first time. I may have been become – I may have become aware before then I am not sure but at least I have got notes that I made on that page. This was an application by the two entities MS Ferreira for leave to cross-examine Mr Oellerman on his report.

Now of course 3.3 Notices would be given to you if a certain person implicates you in his statement. Of course they do not implicate you in their statement.

But of course what they do say there is important and Mr Soni do you want to say anything about it?

ADV SONI SC: Chairperson what one needs to do is see what they – what else they say.

CHAIRPERSON: Ja.

ADV SONI SC: About the source of funds in that affidavit.

10 **CHAIRPERSON:** Ja.

ADV SONI SC: Because Chairperson you will recall that in answer to this the commission's legal team are then answering affidavit to say why leave to cross-examine ought not to be given. But let me go – I am just saying that I am aware of that. But let me just say what...

CHAIRPERSON: They filed a replying affidavit or – after that or do you know?

ADV SONI SC: To the best of my knowledge I have not seen one Chairperson.

20 **CHAIRPERSON:** Ja okay.

MR MONTANA: But Chair...

CHAIRPERSON: Let him finish.

MR MONTANA: Oh so sorry.

ADV SONI SC: So in regard to the funds for this they say – I was reading about paragraph 70 and if I could just say at

70.6 it is said:

It seems as if Mr Oellerman suggests that TMM the second applicant made direct payments to Precise Trade.

Now I am emphasising direct it is not emphasised here.

CHAIRPERSON: What paragraph?

ADV SONI SC: Paragraph 70.6.

CHAIRPERSON: Okay. Yes.

ADV SONI SC: Made direct payments to Precise Trade and
10 Invest 02 Proprietary Limited and or for instance transferring
attorneys Borchard and Hanson from time to time.

Mr Oellerman suggests that the aforesaid payments by TMM coincide with certain payments to and from Precise Trade and Investec 02 Proprietary Limited.

That is of course the transactional account that he is referring to.

CHAIRPERSON: Ja

ADV SONI SC: There is nowhere in his report – his affidavit
or any of the further documents did Mr Oellerman at checked
20 the so called source of the payment reference as TMM
payments.

And this reference by Mr Van Der Walt in that bank account Chair. Then they say and this is a crucial part.

“With a little effort Mr Oellerman would have
been able to establish the following:

None of the payments mentioned in the report of Mr Oellerman were made from a TMM bank account. I am the CFO of TMM and Siyangena I can confirm the aforesaid and I will put Mr Oellerman to the proof thereof if and when allowed an opportunity to do so.”

Then 70.9.2 – The bank account from which TMM payments were made – and they put TMM in inverted commas meaning the payments referred to by Mr Van Der Walt in his notes. Says – were made is not a bank account opened by TMM or any of its officials or any of its employees in fact it seems as if it was a cash Money Market account opened for and on behalf of Loubser Van Der Walt at Investec Bank.

And then they attach that. Then they continue. With reference to the affidavit of Mr Loubser Mr Oellerman relies further on hand written notes on Investec Bank account statements for Precise Trade and they attach it.

20 Assuming that payments into the aforesaid account came from TMM Mr Oellerman in his report suggests that payments were made by the applicants for the benefit of Precise Trade. Where Mr Oellermann’s assumption is inaccurate and misplaced is where he failed to investigate the source of their payments. TMM Holdings held an account with ABSA

not Investec Bank. The Investec Bank from which payments were currently made was an Investec Bank opened by Loubser Van Der Walt with client name TMM Holdings Proprietary Limited as is evident from Annexure TD24. Loubser Van Der Walt – Mr Van Der Walt informed TMM it is myself and Mr Ferreira on the 12th of March that the aforesaid bank account was opened in order to receive payments in terms of the agreements concluded with the applicants and payment made into the account where with
 10 specific reference to Wetlands Wakkerstroom Farm. I append hereto a copy of an email received from Mr Van Der Walt and that email says what they are saying.

Then they say 70.15 – any payments from the actual bank account of TMM to the aforesaid account were made in account – were made in accordance with the agreement with Mr – of Mr Van Der Walt.

Then they continue at 70.16 – Mr Van Der Walt had full control and exclusive access to the account opened in the name of Loubser Van Der Walt. The funds paid into the
 20 aforesaid account of Mr Van Der Walt were paid for the referenced projects and I can categorically state that applicants had no further control or access to the said account.

Mr Oellerman did not request any applicants to address him on the aforesaid structure and I submit that as a

consequence his provisional report – reports are misleading, inaccurate and factually flawed. There is – Mr Oellerman implicates the applicants with the answers, suggestions and unfounded assumptions of wrongdoing. The applicants were not allowed an opportunity to address Mr Oellerman while the applicants believed Mr Oellerman had an obligation to investigate the matter properly.

Now Chairperson I just want to point this out because we earlier in the affidavit and remember this is an
 10 application to cross-examine. Mr Dubeck says that the purpose of the affidavit is for them to acquire a forensic – I mean the person – the reason for the delay is so they can appoint a forensic investigator who can present a report.

This affidavit Chairperson is in July 2020. What you do not find in this affidavit is how much they paid into Mr Van Der Walt's account – whether they made any enquiries from Mr Van Der Walt as to the allegations made by Mr Oellerman and what the results of the forensic investigations are that they conducted.

20 But perhaps most importantly Chairperson they do not tell you how much TMM Holdings that is Mr Ferreira's company paid into Mr Van Der Walt's TMM account.

CHAIRPERSON: Well two aspects that seems to come out of the paragraphs that you have read or three.

1. Is that they say in the paragraph that Mr Montana read

that is 70.9.1 none of the payments mentioned in the report of Mr Oellerman were made from a TMM bank account. I am the Chief Financial Officer of TMM and Siyangena and I can confirm the aforesaid and I will put Mr Oellerman to the proof thereof if and when allowed an opportunity.

So he is saying in other words whatever payments are mentioned up – whatever payments are mentioned in that report – Mr Oellermann's report those payments did not
10 come from a TMM bank account. That is point 1.

2. He says at 70.9.2 – the bank account from which the TMM payments were made is not a bank account opened by TMM or any of its officials or any of its employees. It is in fact it seems as if it was a cash Money Market account opened for on behalf Loubser Van Der Walt Attorneys at Investec Bank.

And then later he says at 70.18 – paragraph 70.18 – the Investec account from which payments were apparently made was an Investec account opened with Loubser Van Der
20 Walt Incorporated with client name TMM Holdings Pty LTD as is evident from Annexure TT24 appended hereto.

So there is some TMM Holdings mentioned and then he says at 70.14 – Loubser Van Der Walt Incorporated Mr Riaan Van Der Walt informed TMM (myself and Mr Mario Ferreira) on 12 March 2014 that the aforesaid account was

opened in order to receive payments in terms of the agreements concluded with the applicants.

So he is saying Mr Van Der Walt told them – told him and Ferreira that that account was opened in order to receive payments in terms of the agreements concluded with these applicants namely Siyangena, TMM Holdings and Mr Ferreira.

And the payments made into that – into the account were with specific reference to the Wetlands/Wakkerstroom Farm and then he appends it. Okay – so he says that is what they were about.

And then there is some part – that is in Afrikaans there. Then in 70.15 – paragraph 70.15 he says: Any payments made from the actual bank account of TMM to the aforesaid account were made in accordance with the agreement with Mr Van Der Walt.

So based on para – on that it seems that he says there are payments made from TMM's actual bank account to this particular account but he says they were in accordance, in agreement with Mr Van der Walt, which I think he must be meaning is the agreement concerning Wetlands/Wakkerstroom Farm.

MR MONTANA: Yes.

CHAIRPERSON: Okay. So based on that, there were some payments he says came from TMM – I mean to that

account. It is a question of what they were for. And then he says, paragraph 17.16:

“Mr Van der Walt had full control and exclusive access to the aforesaid account opened in the name of Loubser Van der Walt Incorporated...”

This suggests that they did not have access to the account and the monies but they – the TMM did pay - made some payments in that account in accordance with the agreement with Van der Walt. That is at least my
10 understanding and Mr Montana will give his understanding.

And then paragraph 17.17, he says:

“The funds paid into the aforesaid account of Van der Walt were paid for the Reference Project and I can categorically state that the applicants had no further control of, over or access to the said account...”

So again, I guess the project is the – is that of Wetlands/Wakkerstroom Farm. That would be my understanding. Okay Mr Soni, you wanted to say
20 something in connection with what you read? I was just indicating what my impression was.

ADV VAS SONI SC: And that is exactly ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: I submit, Chairperson, what a proper reading of the document – of the affidavit says.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: Now, the point I want to make Chairperson is. That we know from what Mr Van der Walt says that he paid from the Precise Trade account and when he reflected on the Precise account, the debits he made notes of that and when he reflected the credits, he made notes of them and we have been through some of them. If I could just deal with the very first one on page 90 where he says the two credits on the 18th of June of
10 R 1,85 million and R 4 million came from TMM... That is what he says here.

TMM does not dispute because they have had this report with this. They do not dispute that those amounts were in fact paid into the TMM Holdings account from which, clearly, transfer was made to this account. What we have before us then Chairperson, when we get to the nub of the matter is, that the funds that Mr Van der Walt says were provided by TMM loans that he talks about that came into this account, were probably true and I say
20 that for two reasons.

One is. He says: Here is my notes on what happened. TMM, Siyangena, Mr Dubek and Mr Ferreira all had an opportunity to say but those payments do not accord with what we gave to him. They have not done so, not even up to today. Now, there are serious allegations

against them.

They bring an application to say: We want the proceedings urgent. Our name is being smudged. When they have an opportunity they do not use it. They have not used it up to today. I ask you to draw one inference from that, Chairperson. They do not have a proper answer to the inferences to be drawn.

CHAIRPERSON: Okay. No, that is alright. We are at eighteen minutes to five and we obviously are not going to
10 finish today. Mr Montana, you want to say something? Say something and then we will have to adjourn because we have run out of today's time. And then I have got to try and see what we need to do but obviously also to the extent that some work connected with this need to be done, that may be done but to the extent that Siyangena had said they had initiated a forensic investigation, it would be interesting to see what they ...[intervenes]

ADV VAS SONI SC: Absolutely.

CHAIRPERSON: Because they can just let the
20 Commission have the report of their investigation of these payments. Mr Montana.

MR MONTANA: No, no Chair.

CHAIRPERSON: H'm?

MR MONTANA: Chair, I think Mr Soni is to recuse himself.

CHAIRPERSON: H'm?

MR MONTANA: I think he is a – I think that he has demonstrated signs of being bias, signs of being – of having taken sides on these issues. And I think, Chair – ask him a question he did not want until this is read. So I think that I would argue that he has actually shown – you see, he has withdrawn all those notes and he is reading – I think that this report not reading it properly Chair. Let me first just quote two parts, Chair, because I think it is not in
10 the interest of justice. Let me read first seven and eight in page – it is page 4, I think. Paragraph 7 and paragraph 8. Let me start there, Chair.

CHAIRPERSON: I am sorry. You say page 4. It cannot be page 4, I think.

MR MONTANA: Oh ...[intervenes]

CHAIRPERSON: Page 4 of the affidavit.

MR MONTANA: Of the affidavit, Chair.

CHAIRPERSON: Oh, okay.

MR MONTANA: Ja.

20 **CHAIRPERSON:** Ja.

MR MONTANA: I think it is a standalone. It is not part of the ...[intervenes]

CHAIRPERSON: Yes, okay. What paragraph?

MR MONTANA: Paragraphs 7 and 8. Let me read that first, Chair, to go into this.

CHAIRPERSON: Yes.

MR MONTANA: It is submitted that fair..." Can I proceed, Chair?

CHAIRPERSON: H'm?

MR MONTANA: Do you have it, Chair? Should I proceed?

CHAIRPERSON: Ja, I got it. It starts at page 3. Is that right?

MR MONTANA: Page 4.

CHAIRPERSON: I thought you said you want to read from
10 paragraph 7?

MR MONTANA: Ja, paragraph 7 and paragraph 8, Chair, before I make my point.

CHAIRPERSON: Okay my ...[intervenes]

MR MONTANA: Sorry, sorry ...[intervenes]

CHAIRPERSON: ...starts at page 3.

MR MONTANA: Is there ...[intervenes]

CHAIRPERSON: My paragraph 7 starts at page 3.

MR MONTANA: At page 3... No, no I meant page 4, Chair.

20 **CHAIRPERSON:** H'm?

MR MONTANA: Page 4.

CHAIRPERSON: Yours started – let me make sure we have got the same ...[intervenes]

MR MONTANA: The same, Chair. I think from what we are reading it should be the same.

CHAIRPERSON: Mr Dubek's affidavit, is that right?

MR MONTANA: That is correct, Chair.

CHAIRPERSON: And in terms of red numbers, paragraph 7 is at page 8 on my red numbers at the top.

MR MONTANA: Yes, Chair. I think the red numbers is page 4, Chair.

CHAIRPERSON: That is the ...[intervenes]

MR MONTANA: I think, in fact, it is the letter Chair from the attorneys.

10 **CHAIRPERSON:** A letter?

MR MONTANA: Ja, before the affidavit. Sorry, Chair. The covering letter.

CHAIRPERSON: The notice?

MR MONTANA: The notice, Chair.

CHAIRPERSON: The notice of motion?

MR MONTANA: Ja.

CHAIRPERSON: Oh, that is what you are talking about. Okay alright.

MR MONTANA: Do you have that on page 4, Chair?

20 **CHAIRPERSON:** Yes, I have got it. Oh, no, no I thought you were reading – you were going to read from the affidavit.

MR MONTANA: The affidavit itself. Oh, no my apologies.

CHAIRPERSON: The notice of motion, yes.

MR MONTANA: Yes.

CHAIRPERSON: H'm? Yes, I have got it.

MR MONTANA: You have got it, Chair. So the letter says
– the notice says:

“It is submitted that fair administrative procedures requires an unbiased, objective and transparent approach, not only in the presentation of evidence but also in the process of obtaining evidence prior to it being presented.

10 If the evidence of Mr Oellerman and all witnesses giving evidence are related to the relationship between the applicants and PRASA, as well as Lucky Montana, are allowed to be led without the veracity of such evidence, it will have a severely prejudicial impact on the applicant's right to a fair hearing in the high court...”

Of course, Chair, that related to the court matter
...[intervenes]

20 **CHAIRPERSON:** Ja.

MR MONTANA: ...that was mentioned.

CHAIRPERSON: H'm.

MR MONTANA: Chair, let me go to the matter. I think that we are dealing with three different accounts. I think it is very important, Chair.

CHAIRPERSON: Yes, but remember that at this stage, we are not dealing with whether they are right or wrong.

MR MONTANA: Yes – no ...[intervenes]

CHAIRPERSON: Just – I initially just wanted to identify ...[intervenes]

MR MONTANA: Indeed, Chair.

CHAIRPERSON: ...whether this is the affidavit and you confirmed. And then I wanted to establish where exactly where they say what you said they say and we have found
10 out where that is.

MR MONTANA: Exactly, Chair.

CHAIRPERSON: Ja, okay.

MR MONTANA: Chair, the heart of what Mr Soni and I quoted refers to payment from TMM to Precise Trade. That is - so the affidavit ...[intervenes]

CHAIRPERSON: Ja, from an Investec account.

MR MONTANA: Yes.

CHAIRPERSON: Ja.

MR MONTANA: That is the – no, not Investec – that is an
20 Investec account, Chair, yes.

CHAIRPERSON: Ja, ja.

MR MONTANA: So is clearly saying there is not transfer from us as TMM ...[intervenes]

CHAIRPERSON: TMM, ja.

MR MONTANA: ...to Precise Trade.

CHAIRPERSON: Yes.

MR MONTANA: That is the first thing he is saying, Chair.

CHAIRPERSON: Yes.

MR MONTANA: That is number one. The second he is saying, Chair, and let us not confuse(?) them because then we are going to confuse ourselves Chair. The second thing is that we had a relationship with Loubser Van der Walt as a firm which then opened an account because they were managing certain things for us.

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

MR MONTANA: So when he says they have made payments, they are not referring to the account of Precise Trade, Chair. They are referring to the account of Loubser van der Walt, and that is why in the affidavit they take exception to some of the things that is being said, okay?

CHAIRPERSON: H'm?

MR MONTANA: Mr Soni, of course, and consciously, Chair. Consciously.

CHAIRPERSON: H'm?

20 **MR MONTANA:** He conflates those two to support the view despite the fact *that the notes will be drawn*. [Speaker not clear] You remember Chair when I said that I do not want a concession about these notes? He then retains back to his own original position, okay? The original position says they do not deny.

Chair, let me say. Today we are having a major dispute on this issue and I think Chair one of the major things we will ask, especially in relation to this one. I do not think you should wait for the report. It is in the interest of justice for these chaps not be happen to verify their accounts.

You remember why we are here, Chair? It is said that R 36 million of mister – of Precise Trade comes from TMM. Chair, I am still saying it is false. They are
 10 saying it is false, okay? Because they are not talking about that – they are saying if you talk about our work with Loubser, the firm, the fact(?) work and that is for one, two, three.

The allegations that have been made Chair was that Siyangena, which is a division of – it is one of the subsidiaries or whatever of TMM. They are not one and the same company. Siyangena was given R 4 billion worth of contracts and it paid. That is the allegation, Chair. That is why I am here. We say we must deal with the
 20 properties.

Mr Soni said, when I raise my objection, he said: We know for sure. We know that these payments were made by TMM. Okay? So he ...[intervenes]

ADV VAS SONI SC: Sorry, Chairperson.

MR MONTANA: No, no ...[intervenes]

ADV VAS SONI SC: May I just object?

CHAIRPERSON: Ja.

ADV VAS SONI SC: This is about the fifth time Mr Montana said that. Every time I put a proposition to Mr Montana or to you, I have said that this is what is indicated in the bank account.

CHAIRPERSON: Ja, ja, ja.

ADV VAS SONI SC: I did not say it was paid.

CHAIRPERSON: Ja.

10 **ADV VAS SONI SC:** I said that is what Mr Van der Walt says.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And I challenge again Mr Montana ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...to get his script wherever he gets his scripts from to say that I said I know they have paid it. Chair, I did not say that.

MR MONTANA: Chair, it is not an objection. If you are in
20 Parliament ...[intervenes]

CHAIRPERSON: Ja, ja.

MR MONTANA: ...you are going to say we are going to study the Hansard.

CHAIRPERSON: Yes.

MR MONTANA: In this particular instance, the transcript

and the recording will show us. Unfortunately, Chair ...[intervenes]

CHAIRPERSON: Yes, but what he is saying is. He did not say he has personal knowledge. I think that is what he is saying.

ADV VAS SONI SC: Yes.

CHAIRPERSON: He was simply saying this is what is said by Van der Walt based on the document, as I understand it.

MR MONTANA: No, no, no Chair.

10 **CHAIRPERSON**: Ja.

MR MONTANA: Chair, when I took – when I made the objection ...[intervenes]

CHAIRPERSON: Ja, ja.

MR MONTANA: ...and I think at the last and the next time. So that is why it is not an objection, Chair. He has got a different view. I listened, he spoke, you spoke Chair.

CHAIRPERSON: Ja.

MR MONTANA: You reverted back to him. Now is my to respond to these things.

20 **CHAIRPERSON**: Ja-no ...[intervenes]

MR MONTANA: So the objection Chair is not an objection. Chair, I want to say and I hope that when I bring the clip of what he said earlier on today, you will see that that clip Chair – he says exactly. He said we know. And I asked the question earlier on. Who is we? s that the

Commission or is that him or the Legal Department, Chair?

And I will be able to demonstrate that to you, Chair. And that is why I am saying Chair that I find myself dealing with an evidence leader who does not want to assist the Commission but is putting a particular agenda. Chair, the allegation before us is that TMM paid for properties, okay?

Now TMM says: We are not involved in that. We never paid – our relationship is with the legal firm on these
10 particular issues. The allegation is that properties were paid for from the proceeds of the tender that was awarded to Siyangena. These guys are challenging that Chair, okay? So the accounts must not be conflated, firstly. So there is an account of TMM/Siyangena.

There is an account of Lombard(?) which – what Robert spoke about and there is an account of Precise Trade, okay? So that is the first issue, Chair. So they are not saying we never paid Precise Trade at all, okay? So that is the statement I am making, Chair. And therefore
20 would – they are saying, would not have been involved in paying for Mr Montana's properties, okay?

Now this is conflated, Chair, to suggest they have paid some money. It is actually an dishonest presenting Chair because you are saying there is pay – no. There is payment – there is a relationship that – there is a

relationship that they described there. And I do not think Chair that we should – the Chair should say: In the light of this big issue that we should go and say let us wait for the report.

The Commission made certain statements which are not – I want to argue Chair, they are not factually based. They are based on – and that is why I even said the inference we draw suggests. Now I asked Chair. You said we should not go to that issue, earlier on. I said,
 10 would Mr Soni says with absolute certainty to you Chair now – I am asking you – and tell you and the conscious say TMM paid Precise Trade and Precise Trade, not inferences, Precise Trade then bought properties for Montana?

My – the proposition – the different propositions that I have presented and which is backed by the evidence, it shows two things Chair. It shows Montana buying properties, telling them and entering and investing in other properties. That is one. That we can see in documents
 20 including the annexures that I gave to you today.

There is no – and I mentioned very clearly, there is no Siyangena in all of those properties. The second one, Chair. The second proposition that is very clear, which he does not want to deal with, it shows a whole range of investors Chair. A whole range of investors, in

investing in – and I am not referring to TMM, investors outside investing in Precise Trade. How did they make a choice that no that money does not come from all these other investors? It comes from this particular on.

Chair, I think it is a very important factually issue. And I am saying that if you listen to what Mr Soni has been saying now. Now-now, after he has read this thing, Chair. And his response to Siyangena. Somebody who is assisting the Commission would have said
 10 something different that is very important. And I see that he is emotionally – he is so invested in this matter, to use that word.

He is so invested. He is passionate about it, Chair, because if I was not here, Chair, we are going to move from the premise that TMM paid Precise Trade. TMM did not pay Precise Trade and the fair process to follow is not for Mr Soni is to speak on behalf of – and Mr Montana and Mr Soni to speak on behalf of these guys.

It is perhaps proper for either these guys to
 20 come and tell and say to the Commission and the Commission asks questions, Chair. But I feel that Mr Soni has cross the lined – Chair. And I want to say Chair that I do not know what is the procedure. We approach the end of this process, Chair.

CHAIRPERSON: Ja.

MR MONTANA: Maybe I need to take legal advice.

CHAIRPERSON: Ja, ja.

MR MONTANA: But I think that, not only on this one, Chair. Throughout has shown himself that he is incapable of assisting this Commission and the fact that he can promise you that you are going keep take out all those – what do you call it – notes and other documents that were lifted from elsewhere. Yet when he speaks, he goes back to all of that to what – saying Chair. [Speaker not clear]
10 He actually affirms.

Now Chair, I think we should go back. I think we should go back and say – and say Chair that it is important that we look at these issues dispassionately. I do not think he is capable of doing it now, Chair. I think that you can see the level of – actually the level of hostility towards TMM/Siyangena. It is unprecedented from an evidence leader but that has been consistent.

And I said on my first day when I arrived here, Chair. I said Mr Soni is conflicted. He refused. And what
20 did he do? He then in his own statement confirmed that he did work and was briefed by Werksmans and all of those things. Now I am not surprised with the way in which he conducts himself. Chair, the factual matter is.

ADV VAS SONI SC: Sorry, Chairperson. I must object again.

CHAIRPERSON: Yes.

MR MONTANA: But what are you ...[intervenes]

ADV VAS SONI SC: I did confirm, Chairperson is, that I did one opinion from PRASA.

CHAIRPERSON: Ja.

ADV VAS SONI SC: But I never said I have worked Werksmans in relation to ...[intervenes]

MR MONTANA: But that is a conflict, Chair.

CHAIRPERSON: Yes.

10 **MR MONTANA:** It was not disclosed before I said it here.

CHAIRPERSON: Okay. Let ...[intervenes]

MR MONTANA: He had a duty to disclose that to the Commission.

CHAIRPERSON: Okay let us do this ...[intervenes]

MR MONTANA: But can I finalise my point, Chair?

CHAIRPERSON: Ja, okay.

MR MONTANA: Because that is not an objection.

CHAIRPERSON: Ja.

20 **MR MONTANA:** I said he is completed. I am still repeating it now, Chair.

CHAIRPERSON: H'm, h'm.

MR MONTANA: Chair, what should happen in this issue and maybe the issue about the verifying all of these things, okay? And I know because I have done my own preliminary work to see where the numbers are. I would not come here

and be... [Speaker not clear]

But the network that I spoke about when I read the conclusion has been determined and it is quite clear that they are reaching out to Mr Soni in a particular way and that is why you hear the line that he is taking. And I am saying Chair I have got an objection to that. I took out – we agreed – I mean we wasted about two hours, taking out certain documents because I said they are based on... [Speaker moves away from microphone – unclear].

10 Chair, let me ask a silly question. Mr Soni says with absolute certainty to you now, not tomorrow, now Chair and say that I know from all the documents and all the work that I have done that TMM paid Precise Trade who in turn paid for – who in turn paid for Mr Montana's properties. Chair, I think that question is better if he is standing there and tell us because – but Chair I have lost absolute confidence in him.

I think that when I am invited - I am not sure, I think that when I am taking through my affidavit, assuming
20 that I will still be invited – Mr Soni has showed Chair – I do not think that he is helping you, he is helping the Commission. He is pursuing Chair a pre-determined agenda and that is why the documents, some of them, are left out.

CHAIRPERSON: Yes.

MR MONTANA: Others are presented ...[intervenes]

CHAIRPERSON: No, no ...[intervenes]

MR MONTANA: ...in a way that will push a particular narrative, Chair.

CHAIRPERSON: You have made the point Mr Montana. One. We have run out of time. Mr Soni, you may wish to respond to some of this now, in which case you can do so, but we have run out of time. With all the time constraints that the Commission has, one has got to reflect as to how
10 we are going to complete what remains. And you have made the points you have made. Mr Soni, do you want to say something or do you want to say it at another time?

MR MONTANA: Before that Chair. I thought you would clarify the process to call for Mr Soni to recuse himself.

CHAIRPERSON: No, no I am not going to decide that now but I heard what you say.

MR MONTANA: Thank you, Chair.

CHAIRPERSON: Mr Soni, do you want to...?

ADV VAS SONI SC: Chairperson, may I make this?

20 **CHAIRPERSON:** Ja.

ADV VAS SONI SC: This is, as I recall, the fifth day that Mr Montana... [Speaker's voice drops – unclear] The initial enquiring(?) took place and things that get settled(?). I just want to make this one point. What changed today was the question I raised with Mr Montana

about the Parkwood property and the fact that you would enter into an deal, sell a property for R 6,8 million and three weeks later enter into a deal to make improvements on the property.

And I said people may say but that does not look proper or appropriate. That is not what ordinary people do. It does not look like what you were doing. And I can say to you Chairperson, you can look at the record, you can look at everything. That is when Mr Montana thought that here
 10 is somebody who is going to get to challenge the version he wants to put. Now he is entitled to challenge it.

Chairperson, I cannot as an evidence leader – I cannot come to the Commission with no prima facie view about what... [Speaker's voice drops – unclear] I have to have a view. Otherwise, I would be wasting taxpayers' money by investigating things that in a sense are not worth investigating.

The PRASA issue has been in the public space from at least two thousand and... [Speaker's voice drops –
 20 unclear] It does not mean Mr Montana is guilty but when the – when one looks at the evidence, one sees that Mr Montana has many things to answer for. And I did not say it does mean that he does something wrong.

At the same time, when there is evidence, my statements(?) to Montana as you clarified it yesterday, and

I want to suggest that this is what the evidence may lead to, I am obliged to put it to Mr Montana. And I did that yesterday and I did that today and that, in regard to the Parkwood property Chairperson is what turned Mr Montana into realising that he may have... [Speaker's voice drops – unclear]

CHAIRPERSON: Your voice was lowered towards the end of ...[intervenes]

ADV VAS SONI SC: Sorry. I say, that is what turned
10 Mr Montana into realising he may have certain difficulties
in providing answers. It does not mean he has to...
[Parties intervening each other – unclear]

CHAIRPERSON: H'm.

ADV VAS SONI SC: But that is a sense – that is the sense I got from the time that question was put.

CHAIRPERSON: H'm.

ADV VAS SONI SC: And the next question Chairperson was when I drew a link between the R 3,5 million paid in respect of the guarantee for the Waterkloof property and
20 drew attention to the R 3,5 million which, according to Mr Van der Walt, had been paid into the account earlier that day(?)

Now, Mr Montana is entitled to ask for my recusal. I will just make one point as far as that goes, Chairperson. What cannot be said is that I have conducted

myself in a fashion not befitting an evidence leader before this Commission.

Now, one will hear the application. Just make one final point, Chairperson, and that is the request(?) for the recusal of an evidence leader is very different from the request for the recusal of ...[intervenes]

CHAIRPERSON: But I am not going to – but I am not hearing the merits of any application for recusal at the moment.

10 **ADV VAS SONI SC**: Ja.

CHAIRPERSON: I have heard what Mr Montana says, requesting a recusal, but that may have to be dealt with in some other way because right now we have run out of time.

ADV VAS SONI SC: Yes, Chair.

CHAIRPERSON: We do not have the time. So I think we should adjourn, that's number one.

Number two, we can all reflect on the issues, I certainly will, and one of the things that I will be reflecting on will be the way forward particularly given the time constraints and
20 to the extent that Mr Montana insists on or pursues his application or request for your recusal then at some stage I would need to deal with that but I do want to say this, that has crossed my mind as we face the time constraints that we are facing, that despite the fact that we have had – you said five days, I think you said six days yesterday or today,

I am not sure.

MR MONTANA: I think today, Chair.

CHAIRPERSON: Ja, six days. We have not finished but from the point of view, as I understand it, of the evidence leaders, the issue of the properties was the last topic from their side. Mr Montana may have wished to still say something after the topic of properties has been finalised, I am not sure, we covered some ground.

It may well be that – well one, if one can find
10 another time before the end of May, that would be preference, but if we cannot find time it may be that the rest of the issues may have to be dealt with in writing. So questions can be put and answers can be provided in writing and so on. So that is one of the things that has crossed my mind but the preference is, if we can find time and we have a hearing like this, that is what the preference would be.

So I am just sharing with you, both you, Mr Montana and Mr Soni, what has crossed my mind and you can start
20 thinking about it, we do not have to decide it now, I must reflect on it as well but I must best see whether we can find another time when there can be a hearing like this.

MR MONTANA: No, Chair, thank you very much.

CHAIRPERSON: Ja.

MR MONTANA: I would not have a problem with that,

Chair.

CHAIRPERSON: Yes.

MR MONTANA: But I will be deeply – I would be aggrieved, Chair, if this Commission – Mr Soni says my version. Remember too that is why, Chair, I have been responding to all the allegations made against me. I think, Chair, it will be fair that before this Commission adjourns or ends, if the oral hearings that Montana is given an opportunity to tell his story, his side of the story because I
10 have been answering questions, Chair.

CHAIRPERSON: Ja.

MR MONTANA: And I think if the Commission says you cannot do that, then I also think that, Chair, I will apply to you to allow me that I make my own affidavit publicly.

CHAIRPERSON: Ja.

MR MONTANA: But, Chair, I think we will wait until you give us guidance on your decisions.

CHAIRPERSON: Yes, ja.

MR MONTANA: So that one exercise – but I think it would
20 be unfair, Chair, considering the issues that I have raised in response.

CHAIRPERSON: Ja.

MR MONTANA: And I will say I will elaborate and deal with them in my affidavit.

CHAIRPERSON: No, no, that is fine.

MR MONTANA: Chair, I think it will be a gross act of injustice for this Commission not to hear - even if it is a select few issues because of time.

CHAIRPERSON: Ja.

MR MONTANA: But not to hear it and admit it, Chair, I think that it will be – it will be unacceptable to me, Chair, let me be very upfront about it.

CHAIRPERSON: Ja. No, no, no, you are still talking about the affidavit that is subject to the process that has
10 been going on between yourself ...[intervenes]

MR MONTANA: Yes, Chair, I think it will be – we said it will be ready on Thursday for you to decide, Chair, ja.

CHAIRPERSON: Ja. No, no, no, that is fine. We know where we – what the position is with regard to that affidavit.

MR MONTANA: Okay. No, thank you, Chair.

CHAIRPERSON: In terms of what you may wish to say to the extent that you say you would like to tell your story, what kind of amount of time were you thinking of, if you
20 were – if we found time before the end of May?

MR MONTANA: Well, Chair, I do not know, I mean...

CHAIRPERSON: Thirty minutes?

MR MONTANA: Well, Chair, I think it may take an entire morning or afternoon. Let me indicate the issues that we have discussed, Chair.

CHAIRPERSON: Ja. No, no, do not indicate, I just wanted to have an idea. Obviously I might not give you the amount of time you wish for.

MR MONTANA: No, no, Chair, I will accept that, Chair.

CHAIRPERSON: Yes, ja.

MR MONTANA: But I think the question I am raising is that if I say Mr Soni has taken sides, is he the right person to lead me, to lead me in my evidence.

CHAIRPERSON: Ja.

10 **MR MONTANA:** That is a big question, Chair, that we have to look at.

CHAIRPERSON: Ja.

MR MONTANA: But on properties, Chair, I think, Chair, ultimately – I do not even want to pursue this anymore.

CHAIRPERSON: Ja.

MR MONTANA: I have said what I have said.

CHAIRPERSON: Yes.

MR MONTANA: I think that ultimately the evidence will guide – will be ultimately the determinant. That is why I
20 was asking that question, can Mr Soni say with absolute certainty to this Commission that there has been payment from TMM and I think he has been avoiding that question, Chair.

CHAIRPERSON: Ja.

MR MONTANA: But for now I will leave it at that, Chair,

and hope – and look forward to me presenting my evidence, Chair. Thank you.

CHAIRPERSON: Ja. Okay, alright. Let us then adjourn this day's session and in one way or another there will be communication, Mr Montana, as to what is going to happen. We are going to adjourn for about 15 minutes to allow the evening session team to set up. That will be evidence relating to Mr Gama and for the benefit of the public, tomorrow during the day I will be hearing the evidence of
10 the Inspector General Dr Dintwe and in the evening tomorrow we will also continue with Mr Gama's evidence. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon, Mr Myburgh, good afternoon everybody.

ADV MYBURGH SC: Good afternoon, Chairperson.

CHAIRPERSON: Yes, I am sorry, we are starting later than five o'clock but I think you were all here, you know
20 what is happening, so – but once again, thank you to everybody for all your cooperation so that we could sit this evening and try and cover quite some ground. Yes, shall we have Mr Gama take the oath?

ADV MYBURGH SC: Thank you, Chairperson.

CHAIRPERSON: Please administer the oath affirmation.

REGISTRAR: Please state your full names for the record?

MR GAMA: Siyabonga Innocent Gama.

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

MR GAMA: No.

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

MR GAMA: Yes.

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

SIYABONGA INNOCENT GAMA: So help me God.

CHAIRPERSON: Thank you.

ADV MYBURGH SC: Thank you, Chairperson.

CHAIRPERSON: I guess legal representation is the same
as before?

ADV MYBURGH SC: It is the same as before, yes.

CHAIRPERSON: Okay, alright. Thank you. Thank you for
20 availing yourself once again, Mr Gama.

MR GAMA: Thank you very much, Chair, for having me.

CHAIRPERSON: Thank you.

ADV MYBURGH SC: Mr Gama, could I start by asking you
please to turn to Transnet bundle 7, EXHIBIT BB28, that is
your exhibit, and could I ask you please to go to page

250.352, it is about 50 or 60 pages from the back of the file, I assume.

MR GAMA: 352?

ADV MYBURGH SC: 352, yes. You would have seen that since the last sitting the investigators in the Transnet stream got in touch with the journalist who wrote the article about your Oberoi stay and there you find at 352 and affidavit by Kyle Cohen. I am not going to take you through the whole affidavit, I want to just paraphrase parts
10 and then get your comment. Mr Cohen says at paragraph 7 at page 353 that on the 19 August 2017 you responded in writing to the questions that he had put to you and they are attached as annexures and of significance for present purposes, if you go over the page at 7.2 he records that:

“Gama further stated that he, Essa, had merely indicated he can book for me at the hotel, which I accepted. Gama indicated that he would send me a copy of the receipt via telegram at telephone texting application we had to communicate.”

20 And then Mr Cohen goes on to say at paragraph 8 at page 255 that:

“Gama provided me with a copy of an invoice via telegram which he claimed to be from the Oberoi as proof that he had personally settled the bill. The invoice is stamped paid. However, the invoice does

not reflect the name of the hotel nor does it reflect the name of the person who settled the bill. The invoice reflects that it was printed in June 2017 almost a year and half Gama's stay at the hotel and roughly at the same time that I first contacted Gama regarding his stay at the hotel in question. A copy of the invoice provided to me by Gama is attached at annexure KC4."

Perhaps I could just take you to that invoice and you will
 10 see that paragraph 8 that I have just read to you accords with the journalist's – the text of the article itself.

Annexure KC4 you find at page 362 and you will see that it is stamped paid, it does not reflect the name of the hotel, does not reflect the name of the person who settled the bill and you will see that it was printed seems the 18 June 2017. Now previous in your testimony you told the Chairperson that the invoice that you gave to the journalist is that which you find at page 341 of the same bundle.

MR GAMA: Can you show me where I said that?

20 **ADV MYBURGH SC:** Where did you say that you gave the journalist – did I misunderstand your evidence? Was that not your evidence?

MR GAMA: No, can you show me where I said that?

ADV MYBURGH SC: Well, Mr Gama, I can go to the transcript if you want but if I have got it wrong you can

correct me. I am not - want to engage in a battle of wits, did I misunderstand your evidence?

MR GAMA: You probably did.

ADV MYBURGH SC: Alright. Well, can you just explain – perhaps we will deal with it this way. Do you accept that you sent the journalist by way of telegram the invoice that appears at page 362?

MR GAMA: Yes.

ADV MYBURGH SC: Alright. Did you then obtain the
10 invoice at 341 later?

MR GAMA: Yes, it is a different invoice.

ADV MYBURGH SC: Yes.

MR GAMA: It is dated on a different date. As I have said to you, I wrote to the hotel because I did not have a copy and I asked the hotel to send me the invoice and this was in 2018 and they sent me this invoice in 2018.

ADV MYBURGH SC: But what caused you to want to get another copy of the invoice in addition to that at 362?

MR GAMA: Because the one at 362, when I changed
20 phones I lost that information that was on that phone so I had a new phone and I did not have this invoice anymore. But if you look at the invoices they talk to the same issues.

ADV MYBURGH SC: Do you accept the invoice at 341 is not dated?

MR GAMA: Sorry?

ADV MYBURGH SC: It is not dated.

CHAIRPERSON: Just to - Mr Myburgh, just to for the sake of the transcript to confirm that when you say 341 you mean 250.341.

ADV MYBURGH SC: Yes, I do, I beg your pardon. Yes, Chairperson.

CHAIRPERSON: Because I was looking for the page and I forget to factor into 250.341. Okay, I am sorry, I interrupted, do you want to just repeat your question or
10 whatever you put to him?

ADV MYBURGH SC: I put to Mr Gama that it does not appear that 341 is dated.

MR GAMA: No, I does not have a date, as you say, but it is the invoice that I requested in 2018.

CHAIRPERSON: Of course the date he does not have is the date when it was issued, is that right?

MR GAMA: That is correct.

CHAIRPERSON: Just has the date of arrival and date of departure.

20 **MR GAMA:** The invoice does not have a date but the email that I requested the invoice on it will show when it was sent to me.

CHAIRPERSON: Ja, but that is not here, is that right?

MR GAMA: Sorry?

CHAIRPERSON: The email is not part of the bundle.

MR GAMA: But it can be sent here if you want it.

CHAIRPERSON: Oh, you have got it, ja.

MR GAMA: Ja, I have got it.

CHAIRPERSON: Okay, not I think that would be good if it could be sent.

MR GAMA: Then what the Commission has also obtained is an affidavit which I understood from my learned friend is in dispute, so we will deal with that, I suppose, from a Mr Cyril Petrus Lourens. That you find at 342. What Mr
10 Lourens purports to do in this affidavit is to analyse the so-called metadata in relation to your invoice at 341 and he concludes that that invoice was created. If you have a look at page 250.346, he concludes that it was created at paragraph 23.1 on the 19 February 2018.

ADV OLDWAGE SC: Mr Chair, I am going to object to what is being put to Mr Gama on the following bases. First one is that this kind of a document or report by an expert, someone who professes to be an expert in information technology, as this deponent appears to be doing, will in
20 the ordinary course describe the methodology employed by him or her with reference to the retrieval of electronic data and that is governed in terms of the Electronic Communications and Transactions Act. There is no methodology employed and as and by way of example, assuming there was a mirror image made of a hard drive

and in this retrieval process, that hard drive is considered. The governing principle is he has totals or what is commonly described as the algorithm is central to that. In other words, you have two unique numbers and if they match, it is an indication that there was no attempt to interfere with the date and modify and so forth. We have none of that methodology described so I cannot on the face of merely what is presented in an affidavit accept that this information is accurate and correct. In fact, I can raise
10 many reasons why I would object to the reception of this kind of evidence if we were in a trial setting. Not that I am deprived presently of the opportunity of doing that, hence me raising this objection.

The second concern what actually appears in this document which will then tell that what Mr Myburgh now has done is to put that this document's creation date is the 19 February 2018 and to put that as a fact is wrong because, you see, and regrettably in small print what this deponent has done, is he says there is a reference to a
20 footnote. That very footnote is not of relevance but if you turn the page, there is also a creation date at paragraph 22.1 that talks about file created and then there is a footnote at number 11 in small print which reads:

"Date created or date copied from one drive to another (this is not necessarily the original creation

date but this is how NTFS file systems stores dates.)

There is no certainty. One, from the methodology employed, which is lacking in this document. And, for instance, I just want to add to that, if you were to analyse hard drives you would talk about the insertion of certain equipment or items, a right blocker which would prevent a duplication or perhaps interference with that electronic data. There is no reference to any of that but what we see
10 in the foot note is that what is being presented here is not certain. In other words, it is capable of variation. So we cannot put to the witness, with respect, that that is definitely the creation date. If we have to have regard to that and I want to avoid a situation where because of the time pressures that the Commission is working under, me having to re-examine Mr Gama on this point. The position is, if this document was created on 19 February 2018 and we look at the time zone and I am going into a bit of detail here to demonstrate my objection. That UTC is something
20 that applies to Europe and perhaps even the United Kingdom. It is not something created in South Africa.

So if the suggestion is that this document was created on that date, I want to make it clear that it could not have been created by Mr Gama. But we cannot begin to accept that there is any truthfulness or that that

assertion is in fact correct by virtue of what appears in the very document. So that is my objection, Mr Chair.

CHAIRPERSON: Thank you, Mr Myburgh?

ADV MYBURGH SC: Mr Chair, I think this is maybe a lot to do about nothing because Mr Gama himself says that I no longer had the invoice that was printed in 2017, so I asked the hotel for another copy, so it was more than likely printed in 2018. We are not suggesting that Mr Gama has fabricated the invoice at 341, what this metadata reveals is
 10 that the invoice was in fact created at the UAE by the hotel but it is the date that is of significance to show you that we are dealing with two different invoices. If he has accepted that, that he gave the journalist the 2017 invoice and then he went and got another invoice in 2018, and that is common cause, then I suppose to a large extent the metadata falls away because if Mr Gama gives us the email where he requested the invoice from the hotel and he can give us the string coming back then presumably the creation date would correspond.

20 But if I could just show you one thing and that is that what the deponent says at paragraph 24:

“I confirm the results from E K Spikes(?) assessing the properties of the document in Abode Acrobat Professional and also by extracting the metadata of the document with an ExiFTool, results are noted in

annexure CL2.”

Now CL2, you will see, Chairperson, is at 351 and there you see very clearly that this was created it says on the 19 September 2018. So I will consider my learned friend’s objections and, if necessary, we can improve this affidavit. But as I say, if we can get the email string from Mr Gama then presumably it may very well add up to this and not be an issue.

CHAIRPERSON: Ja, okay, so ...[intervenes]

10 **ADV OLDWAGE SC:** Mr Chair, given the response by my learned friend, I have asked that he then holds over on further questioning in relation to particular document. We are happy to provide him with copies of the emails.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: I certainly have no more questions.

CHAIRPERSON: Ja. No, that is fine.

ADV MYBURGH SC: I do want though to ...[intervenes]

CHAIRPERSON: I guess the email can be provided by tomorrow after – ja, when we start, as we resume. Okay.

20 **MR GAMA:** Chair, I just want to say I do not know – I do not think we need – or we needed any expert to send you these kinds of documents if the issue was these invoices, they do not look the same. The contents of the invoices are exactly the same but one was obtained later than the other. That could have been verified with me, it does not

need – what do you call this kind of person?

CHAIRPERSON: This particular expert.

MR GAMA: It does not need this MacGyver, I do not know what they call this, physical forensic...

ADV MYBURGH SC: Well, perhaps I can just ...[intervenes]

CHAIRPERSON: No, that is fine because I think there is agreement that – let us wait until the email has been provided and take it from there.

10 **ADV MYBURGH SC:** I think the reason why we got the affidavit will become clear now. So, Mr Gama, when I was questioning you on the 30 April at page 77 of the transcript, you said:

“Yes, I did not have a copy of the bill so I approached the hotel to send me – I just gave them the dates when I was there.”

I say:

“Yes but this paragraph reflects that you provided the journalist with an invoice.”

20 Mr Gama:

“Yes, it could be this invoice.”

Now we are talking about 250.341.

MR GAMA: Ja, so ...[intervenes]

ADV MYBURGH SC: Just if you would bear with me? I say:

“But how can it be that invoice because it is recorded here, unless it is wrong, that the invoice does not show the hotel’s name.”

We were referring to the journalist’s article.

“It does not say you settled the bill and was printed in June 2017.”

Mr Gama:

“He probably got it wrong.”

Myburgh:

10 “Alright, do I understand that you say that you sent this invoice 250.341 to the journalist?”

And you say yes.

MR GAMA: Ja, I think there was no clarity that the contents is the same anyway, it has not changed. But an invoice that is generated in 2018 could not have been sent to somebody in 2017. I think that is clear. Here I think it is a matter of semantics, really. All I said was the contents of the invoice are the same. In fact, when I was asking for a copy of the invoice, I used the dates that I was there and
20 I said these are the dates I was there, can you send me a copy? And they sent me a copy and the contents of the invoice numbers and whatever is in the invoice, it has not changed.

ADV MYBURGH SC: Then to drive the point home, you say:

“I sent him this invoice, 250.341”

You say yes. I say:

“Right.”

You say:

“Yes, is not any other.”

MR GAMA: Can we agree that the contents remain the same, they have not changed?

ADV MYBURGH SC: They have changed, Mr Gama, because the one has its stamped date, the one has a date
10 when it was printed, the other does not. We have gone through that but the point is that you told the Chairperson that you sent the journalist 341, that is why we ...[intervenes]

MR GAMA: No, I said to you – and you have just quoted me.

ADV MYBURGH SC: Yes.

MR GAMA: You said I said to you that it could be. That is what you quoted just now. I do not have this thing that you are reading from, my transcript, but if you gave me a copy
20 we could both quote what you have just quoted to me. You have just said to me that I said it could be. I never said it is. But the contents, Chair, as I persist with this matter, the contents in terms of what the amounts were and all of that, they remain the same.

CHAIRPERSON: Well, if you do need to see the

transcript, that can be done, either now if there is a copy available or it can be obtained and later on it can be given to you and then questions can be put after you had a look.

ADV MYBURGH SC: Yes, certainly, I will let my learned friend have my copy and he can deal with it in re-examination, Chairperson.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: Now, just to pick up on one issue and you confirmed what is state in the article, that you
 10 raised with Mr Essa or Mr Essa raised with you his involvement in Trillian during your meeting in Dubai. I just want to make sure that I understand your evidence correctly, Mr Gama. At what point did you come to learn that Mr Essa had a shareholding in Trillian?

MR GAMA: It was much, much later. It would probably be at some point in 2017 early, so when we were discussing with the journalist it then had dawned on me that what he had been talking about, about creating a black-owned consulting firm that he may in fact have been referring to
 20 the creation of Trillian. So it had become public news at some point probably in 2017 in that – he had some kind of shareholding or some interest in Trillian. When I was at Transnet in 2016, as I indicated to you, there was a letter from Regiments that indicated that would be forming Trillian. There was no mention of an Essa. It was much

later. I think when one reads too many newspapers, I think that that is when that information had come about that Essa was also a shareholder in Trillian but I learnt that much later. I would not know, it was certainly around the time when the journalist and I were having a discussion. Ja.

ADV MYBURGH SC: Could I take you to a document that part of Mr Mohamedy's affidavit? Could I ask you to fish out his bundle BB3B? Someone will help with that. It
10 should be, Mr Gama, here this side, 33B – BB3B. Could I ask you please to turn to page 519?

MR GAMA: 519?

ADV MYBURGH SC: 519 and I am talking about the numbers at the top, MSM519.

MR GAMA: The bold ones?

ADV MYBURGH SC: No, not the bold one, you should find a number above that.

MR GAMA: Okay.

ADV MYBURGH SC: Do you see that? An MSM number.

20 **MR GAMA:** Ja.

ADV MYBURGH SC: So you will remember that you gave evidence as well that you spoke to Mr ESSA about a migration of work from Regiments to Trillian and this is one example of that, you find that at 519. Are you there? Do you see that this is a ...[intervenes]

MR GAMA: No, I have never said I spoke to Mr Essa about a migration of work from Regiments to Trillian. I have never said that.

ADV MYBURGH SC: Alright, so the article says, quoting you:

“Essa said the expertise would remain the same as core resources, would migrate from Regiments and that the quality of the work for Transnet would be unaffected.”

10 I think you accept that last time, correct.

MR GAMA: Ja, we never had a discussion about the name of the entity. I never knew any name in terms of what the name of the entity was.

ADV MYBURGH SC: Alright, well I do not want to traverse ground we have already traversed, I want to try and go forward. If you have a look at this document at page 522.1, it is signed by you on the 9 May 2016, four or so months after your meeting with Mr Essa. Do you see that? And the recommendation at that page is:

20 “It is recommended that the acquisition and disposal committee approves cession of the abovementioned contract from Regiments to Trillian, an increase in the scope for the detailed capital optimisation support serves and increase in the contract value from 375 million to 463.3 million.”

Do you see that recommendation?

MR GAMA: Yes.

ADV MYBURGH SC: And what I just want to direct your attention to is page 521 under the heading Discussion. It says at paragraph 12:

“On 13 April 2016 Mr Wood sent a letter to Transnet, annexure B, indicating that he is ceding his rights received from Regiments to Trillian.”

13. Transnet then initiated its vendor approval process
10 to ensure that there is no reason why Trillian cannot be a vendor to Transnet.”

Paragraph 14, over the page.

“The process indicates the following. The EEM affidavit provided for their level two BBEE certification indicated that they are 60% black-owned shareholding. Trillian Holdings (Pty) Ltd 60%, wholly owned by Salim Essa.”

Do you see that?

MR GAMA: Yes.

20 **ADV MYBURGH SC:** And then it lists the other shareholders and then at paragraph 16:

“Trillian has in the past successfully provided services as a subcontractor to Regiments on various assignments.”

Etcetera. And that is how here Trillian came to replace

Regiments on this particular contract.

MR GAMA: Yes.

ADV MYBURGH SC: And just – perhaps you can help me, is the shorthand for this contract the GFBE contract?

MR GAMA: Sorry, shorthand?

ADV MYBURGH SC: Is this what is commonly referred to as the GFB Consulting contract?

MR GAMA: Okay sorry, I think I am lost there Mr Myburgh.

10 **ADV MYBURGH SC:** Alright, well don't worry about that.

MR GAMA: You're talking about what was being ceded?

ADV MYBURGH SC: Yes is this typically referred to as the GFB contract?

MR GAMA: Yes, the heading of it says it is a cession of the GHFB contract yes, that agreement.

ADV MYBURGH SC: Alright.

MR GAMA: That's what was moving from ...[intervenes]

ADV MYBURGH SC: So I take it then you accept on the assumption that you read this or let me not put it that way,
20 did you I assume did you read this memorandum before you signed it and recommended it?

MR GAMA: In the main what I understood from the letter that I had was that there was a letter from Mr Wood to us so I read that, that letter, I was not aware that at that time there was already this breakdown in terms of the actual

shareholding but I note what it says, it says that there was a – Daniel Rooi, Johannes Fourie, there was also the Trillian Holdings which it says it was wholly owned by Salim Essa, and there was someone else, Arion nominees and the directors but I don't think I went into much of that detail at the time.

ADV MYBURGH SC: So on the face of this document as of that time Trillian Holdings Pty Limited had a 60% shareholding in Trillian correct?

10 **MR GAMA:** In this entity.

ADV MYBURGH SC: Yes, and in fact that entity derived its BEE certification from on the face of it that shareholding?

MR GAMA: It derived its BEE certification from?

ADV MYBURGH SC: From the 60% shareholding held by Mr Essa?

MR GAMA: Ja.

ADV MYBURGH SC: Correct.

MR GAMA: So I think that's what people were talking
20 about but I was not aware that our people actually knew about it and had actually written it.

ADV MYBURGH SC: So your evidence is you didn't read this, you read the letter from Mr Wood?

MR GAMA: I received a letter from Mr Wood which was attached to the ...

ADV MYBURGH SC: At the four recommending
...[intervenes]

CHAIRPERSON: I am sorry, was that letter – was this memorandum attached to the letter?

MR GAMA: No when the cession was requested it was on the basis of two letters, there was a letter from Regiments and a letter from Mr Wood which was indicating what was happening.

CHAIRPERSON: Oh, okay.

10 **MR GAMA:** So I am saying that those I remember, these I may have just glossed over and not paid too much attention but I see that it is there.

CHAIRPERSON: H'm.

MR GAMA: Ja.

ADV MYBURGH SC: But of course the letter from Mr Wood would not have dealt with whether or not Transnet should approve Trillian as a vendor and that is by and large what this memo is about, paragraph 13 Transnet the initiated its vendor approval process to ensure that there is
20 no reason why Transnet cannot – sorry Trillian cannot be a vendor to Transnet and then that unfolds, in order to recommend ...[intervenes]

MR GAMA: That's the work that the procurement people do so I think as you will see that it is coming from the procurement or chief supply chain officer, he is talking

about all of the work that they have done, ja.

CHAIRPERSON: But are you saying you signed this memo without reading it?

MR GAMA: No, no that is not what I am saying, I am saying ...[intervenes]

CHAIRPERSON: You are not saying that.

MR GAMA: I am saying that I may have just glossed over it, it was not something that was probably important at the time. So it is always interesting with the benefit of
10 hindsight when people say okay just look at this memo I can see what it says, but what was foremost in my mind was that the work was moving to – with Wood from Regiments to this new entity.

CHAIRPERSON: So you are saying you didn't read it in any detail, you glossed over it, is that what you are saying?

MR GAMA: Ja, I didn't read it in any detail, I was aware of – and I had in possession what they are saying in item 12, where we received a letter from Mr Wood which they
20 say is Annexure B, and then it was then saying that his ...[indistinct] received from Regiments to Trillian Capital so I think at that time in my mind's eye he was the main shareholder of this new entity called Trillian Capital something, ja.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, I want to then perhaps move off this topic, but I just want to ask you one last question on this, a penultimate question, you gave evidence earlier about how you were a bit irritated with Mr Essa because he almost tricked you into meeting with him at the Gupta residence, do you recall giving that evidence?

MR GAMA: Yes.

ADV MYBURGH SC: Why – I don't know if I have asked you why did you agree to meet with Mr Essa again at this
10 time in January 2016, in the light of your previous experience when you met with him?

MR GAMA: When you say why did I agree to meet with him, well I met with him I had in quite cut and clear when I last met with him and I had voiced my anger in terms of what I thought was an ambush, and I dealt with that issue, so if somebody then says no I would like to meet with you about another issue then I said okay fine let's meet, and then he wanted to talk about creating a consulting entity. It wasn't really going to take anything away from me, I
20 probably just spent an hour or so with him.

ADV MYBURGH SC: I want to just give you an opportunity to comment on this because sometimes the timelines are lost on one. By the time that you met Mr Essa in January 2016 in Dubai on the money flows investigation Chairperson I am assuming that investigation

is upheld by you, what we know by that time is that Mr Essa had taken 50 cents in every rand of fees that Regiments had charged Transnet in respect of a variety of contracts. Mr Essa or one of his companies had been appointed as a skills development partner to Regiments. Mr Essa through Tequesta and Regiments Asia had concluded business development services agreements with the Chinese locomotive manufacturers in respect of the 95 locomotives, the 100 locomotives and the 1064 locomotives
10 and you had authorised payment already to Trillian in December of respect of the Club Loan of R93million, so while Mr Essa for a long time was in the background now he came to the foreground where he was effectively a majority shareholder in a service provider to Transnet, in that context that you met him all of this had been done before and as I put to you already the money flows investigation is to the effect that what I have sketched to you was part and parcel of a very major money laundering scheme involving the Guptas.

20 That's the context in which you met the man.

MR GAMA: Okay Mr Myburgh is it your contention that I knew about these payments or these money flows that you are talking about? Is it your contention that I was complicit in that? So if that is your contention then put it to me.

ADV MYBURGH SC: I am asking ...[intervenes]

MR GAMA: Because I really don't know anything about money flows, I don't know anything about what Essa was doing, I had met him at face value, I have indicated to the Commission when I met him. You are telling me what was happening in the background, I was not aware of it, but if your inference is that maybe somehow I knew about it or I was complicit in it put it to me.

ADV MYBURGH SC: Well that is what we are
10 investigating here Mr Gama but I start by asking you to comment as you have and what you have said is that you were unaware of all of this. Do I understand correctly?

MR GAMA: Absolutely, I was not aware.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Are you moving away from this memo?

ADV MYBURGH SC: Yes I am DCJ.

CHAIRPERSON: This memo Mr Gama at page 519 why would you remember that you didn't read it but you glossed over it, what about this about four and a half years ago
20 what would make you remember that you glossed over it, you didn't read it?

MR GAMA: No, no Chair semantics in English.

CHAIRPERSON: Well English is not my first language either.

MR GAMA: Ja, this is my third languages.

CHAIRPERSON: I don't know about Mr Myburgh, but
...[intervenes]

MR GAMA: [speaking in vernacular] so sometimes you go through these documents, you skim through them, you absorb it at the time but if you ask somebody line by line and say this document that you read to – even if you asked me two or three weeks ago and you say look here is a five page document, I think it's five, it is six pages.

CHAIRPERSON: Ja, six pages.

10 **MR GAMA:** So we have this six page document and then you say to me as Mr Myburgh does let's go to this particular line, even if you ask me after you read it and we sent it to the committee to deliberate and then you say to me you know what there is J I Affeat is a director of that company, I am just looking at something, I would say look give me the document, let's look at it, because I am – if you're not familiar with you know the names and the people you might not remember all of that, so if you remember, I remembered all of the gist of it, and normally these
20 documents when you sit and you discuss this, you have somebody who sits across from you, you've got the document, they have got a copy. You go through it and say okay what is going on here and they say okay there's an annexure, they say can I see the annexure, you read it you say okay everything on the face of it looks okay and it

means that we can do all of the things that we want to do here, and really that's what happens there, but you can't have a 3 000 word document where you then say you would remember line by line every line that was there.

CHAIRPERSON: Ja, no, no, I am not suggesting that you should, you see ...[intervenes]

MR GAMA: Because we wouldn't send a document to the committee if we had not checked and seen that the things that we were saying were accurate and all of that, so that
10 would have happened, but if you come and ask me six years later if I remember everything that was in that document as I said to you I did learn that Essa was a 60% shareholder in one of the Trillian companies but I cannot tell you at what point, I can't recall at what point did I learn this.

CHAIRPERSON: No, the reason why I ask you is that my expectation is that when you look at a document that you have signed or that – if I look at a document that I signed five years ago I know that if I see my signature there I
20 would know that I would never put my signature there without reading the document.

MR GAMA: H'm, h'm.

CHAIRPERSON: Okay so once my signature is there and I am satisfied it is my signature then I would know that I read it.

MR GAMA: Ja, no we would have gone through the document.

CHAIRPERSON: Yes, so that is – so but what was interesting for me is that you were saying you glossed over it so as opposed to ...[intervenes]

MR GAMA: No, no, not that meaning.

CHAIRPERSON: Not that meaning?

MR GAMA: Not saying I just glossed over it.

CHAIRPERSON: Yes you read it?

10 **MR GAMA:** Yes, no, no we skimmed through it and we discussed it, we may not have discussed each and every aspect of it but we discussed it.

CHAIRPERSON: But there is having a look at it and not reading the whole document, reading certain parts and letting somebody tell you what it says, which is one thing. There is reading the whole document even if you discuss it with somebody. So is the position that you did read the whole document?

MR GAMA: No, no I read the document ja.

20 **CHAIRPERSON:** Okay, alright, Mr Myburgh?

ADV MYBURGH SC: Then Mr Gama perhaps I just want to put to you how come it never, the shareholding in Trillian didn't jump out at you in the light of the fact that just four months before you had met Mr Essa in Dubai?

MR GAMA: What didn't jump out?

ADV MYBURGH SC: The shareholding in Trillian and Mr Essa's involvement.

MR GAMA: Why would it jump out *per se*, are you saying he wasn't entitled to be a shareholder in the entity?

ADV MYBURGH SC: I am saying in the light of the discussion you had in Dubai.

MR GAMA: I don't understand the question really.

ADV MYBURGH SC: Now we are talking about the cession here of this contract from Regiments to Trillian,
10 you will recall that in 2015 the so-called GBF contract was originally awarded to McKinsey and Regiments, do you remember that?

MR GAMA: Ja, I think it was Regiments ja.

ADV MYBURGH SC: Ja, I just want to put to you the money flows investigation has revealed that Mr Essa got 50 cents in ever Rand that Regiments charged on the GBF contract?

MR GAMA: Ja, I don't know that ja, you are telling me.

ADV MYBURGH SC: I want to now move to another
20 substantive topic, you will remember where we ended off last time, I had been questioning you about the ZAR Club Loan and there are two transactions relating to the financing of the 1064 that I want to deal with, the one was the Club Loan, the other is the success fee that was paid to Regiments of R189million. Perhaps I could ask you, and

maybe the most convenient way to deal with this, the easiest way, is for me to ask you to go to the POI bundle please, that you find at Bundle 6, BB27.

CHAIRPERSON: Will somebody assist me, or is it a file that he already has?

ADV MYBURGH SC: We will get someone to help you, we will put that file away for you.

MR GAMA: Page?

ADV MYBURGH SC: I will be with you in a moment. I
10 think Mr Gama has it, right. Could you please go to page 389.

CHAIRPERSON: 389?

ADV MYBURGH SC: 389 Chairperson yes. I am just going to take you through paragraphs 2.6.1 to 2.6.4 and then also paragraph 2.6.6 and perhaps you can have open, I think you do at the same time Mr Gama, Bundle 7, Exhibit BB28, a collection of documents relevant to this topic you find at page 250.380

CHAIRPERSON: The last page you mentioned was 260?

20 **ADV MYBURGH SC:** 250.380 Chairperson.

CHAIRPERSON: In the same bundle?

ADV MYBURGH SC: No that's in ...[intervenes]

CHAIRPERSON: In another bundle?

ADV MYBURGH SC: In Exhibit BB28, Mr Gama's exhibit, we need to deal with the POI exhibit and Mr Gama's exhibit

together.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So Mr Gama if I could take you then please back to BB27, this is an extract from – or it is the MNS report on transaction advisors. 2.6 the second addendum to the MSA, it says:

“On 28 April 2015 Transnet ...[intervenes]

MR GAMA: Which page are you at?

ADV MYBURGH SC: 2.6 at page 389.

10 **CHAIRPERSON:** 2.6 so the page is 389 and the paragraph is 2.6, ja.

ADV MYBURGH SC: Are you there Mr Gama?

MR GAMA: I have got 2.6.8, 2.6.9, I don't have that 2.6.

UNIDENTIFIED COUNSEL: Mr Chair it is the black number as opposed to the red, Mr Gama must look at the black number.

CHAIRPERSON: Oh yes.

ADV MYBURGH SC: On the left hand side.

20 **CHAIRPERSON:** Look at the black numbers in the pagination at the top.

MR GAMA: Oh.

CHAIRPERSON: Ja, not the red ones, thank you.

MR GAMA: Sorry, 2.89.

ADV MYBURGH SC: So it says there ...[intervenes]

MR GAMA: Sorry I am struggling.

CHAIRPERSON: Will somebody help him.

MR GAMA: Is it 389?

CHAIRPERSON: Ja, 389. Maybe somebody can assist him when there's a need, it should not be too far away, so that when there is need ...[intervenes]

ADV MYBURGH SC: Alright, I will organise somebody to be more readily on standby Chairperson.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Alright, at 2.6:

10 "On 28 April Transnet Group Treasurer, Mr Ramasabudi, compiled a memorandum which was recommended by Mr Singh as well as Mr Gama and submitted to ...[indistinct – dropping voice]. The memorandum provides the following;

A request to the BADC to approve the contract extension from 99.5million to 265.5million for the appointment of Regiments Capital or Transaction Advisory Services and support to Transnet on the 1064 locomotive transaction.

20 A summary of the services provided by Regiments etcetera in relation to securing the China Development Bank loan in the amount of USD1.5billion, and a motivation for risk sharing basis payment of R166million excluding VAT to Regiments on the basis that the services provided

by Regiments for a period of more than 12 months
were at risk.”

Now perhaps you could just keep that open, and let me ask
you please to turn to that memorandum which you find at
page 250.383.

CHAIRPERSON: I am sorry, just repeat that page and the
bundle? Mr Myburgh?

ADV MYBURGH SC: Alright, 250, so now we are in Mr
Gama’s exhibits, DCJ you want us to read the report and
10 the exhibit together.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Mr Gama’s exhibit 250.383.

CHAIRPERSON: 283? 2.283.

ADV MYBURGH SC: 250.383.

CHAIRPERSON: 383?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So there you find the memorandum
which you signed and recommended on the 28th of April
20 2015, that you see Mr Gama at page 391. Can I then take
you to the beginning of the memorandum at 383, subject,
request to appoint JP Morgan and Regiments Capital to
conclude on the China Development Bank loan, and then it
sets out the purpose of this submission is to request
acquisitions and disposal committee to,

1. Approve the confinement appointment to JP Morgan to hedge the financial risk [interest rate, credit and currency risk] emanating from the US Dollar 1.5billion China Development Bank CDB loan bank into ZAR;
2. Approve the confined appointment of JP Morgan to lead and underwrite the equivalent syndicate ZAR loan of 1.5billion dollars.
3. Approve the contract extension from 99.5million to 265.5million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and
4. Delegate authority to the Acting GCE to approve all documentation relating to the confinement.

Now if I could take you please to page 387. Now we're dealing with the Regiments Capital part.

CHAIRPERSON: That is 250.387?

ADV MYBURGH SC: 250.387, paragraph 62.

"Transnet appointed Regiments Capital"

And now we're talking about an issue.

20 "...as the transaction advisors on the 1064 locomotive transaction. In terms of the aforementioned mandate Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet."

As at 64:

“Regiments had been working together with the risk management/middle office of Transnet Treasury for over the last 12 months to achieve outcome below.”

Page 69:

“Regiments has assisted Transnet in negotiating with a number of potential Chinese sources of the ZAR funding for the ZAR syndicate loan facility including etcetera.”

And then at 73, of direct relevance, and that is at 250.388:

10 “The financial advice and negotiation support that Regiments provided through this entire process which took in excess of 12 months was done at risk with an expectation of compensation only on successful completion of the transaction.”

And then at 75:

“Given the invaluable contribution Regiments to the successful conclusion of the transaction Regiments success based fee will not exceed 15 basis points.”

And then the schedule reflects that that amounts to
20 R166million, do you see that?

MR GAMA: Yes.

ADV MYBURGH SC: And then in a similar vein if you go to page 250.390 at paragraph 97 contribution of Regiments to the successful conclusion of the funding transaction. Regiments is due a success or risk based fee of 50 basis

points on yield payable by Transnet to JP Morgan or portion thereof subject to a maximum of 166.

And the recommendation that is just to repeat the third bullet:

Approve the contract extension from 99.5 million to 165.5 million. So the difference between those two figures is 166 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet.

That you signed on the 28th of April 2015, do you see
10 that?

MR GAMA: Yes.

ADV MYBURGH SC: Now when this memo talks about the appointment of Regiments and the work that it was initially required to do can I just direct your attention please to an earlier document signed on the 4th of February 2014 and that you find at page 250.380.

And this is the third addendum for advisory services relating to the acquisition of the locomotive tender and you will see that it is between McKinsey and Transnet and if you
20 have a look at 382 it was signed by Eric Wood title Executive Director Regiments Capital. And then it was signed by Mr Singh on behalf of Transnet it seems on the 4th of February 2014.

If I could direct your attention to paragraph 3.1 at page 250.380 the deliverables for the revised scope of work

as per clause 2 derived and agreed upon by Regiments Capital for executing the funding portion of the tender agreement – it is out of code – the objective of this work specific project is to conduct all the necessary studies and preparatory work to enhance Transnet's ability to raise the required funding at a competitive interest rate and to achieve an optimal funding structure with minimal pressure – sorry – on Transnet's funding liquidity.

And then you will see there is a whole lot of numbers
10 where the deliverables are set out for example at 250.381 seven a value – evaluating all potential funding sources and mechanisms and then in relation to the variation of the contract price you see at 4.2 that the work performed for this deliverable will be fixed at a price of R15 million.

That is the third addendum which was on the 4th of February 2014. Then we get the memo that you signed which we have dealt with at 383 and then I want to take you to the next document please.

That you find at page 392 the recommendation that
20 you made and your colleagues made to BADAC was then accepted on the 29th of April this you find at 240.392.

You will see that at 393 it was resolved and then the wording is the same as your recommendation. And then the next document I want to take you to...

ADV OLDWAGE: Sorry Mr Chair I have attempted to follow

and I am sure Mr Gama is not following because he has referred to a document of which it appears Mr Myburgh's putting to him that it was approved by him. It was reference to page 392 that is simply not correct. That is a letter addressed to Whom it may concern appears to have been produced under the hand of one Buchle Ndlovo. So I think we need to go back so we can get (talking over one another).

CHAIRPERSON: Ja.

ADV MYBURGH SC: Sorry may I just retrace my steps.

10 **CHAIRPERSON:** Yes.

ADV MYBURGH SC: What I meant to say and I hope I certainly intended to is that Mr Gama and his colleagues made a recommendation to BADAC. Mr Gama signed that on the 28th of April 2015. What you find at 2...

CHAIRPERSON: It was the memorandum.

ADV MYBURGH SC: Yes. What you find at 250.392 is a certified extract from the minutes of the BADAC meeting that was held the next day on the 29th of April. If you go to 250.393 it is resolved that the committee approved the
20 following and of importance is the second bullet point the contract extension for the appointment of Regiments Capital for transaction advisory services and support to the company on the 1064 locomotive transaction from 99.5 million to 265 million.

So what was recommended by Mr Gama was then

approved by the BADAC. That is 29 April. If I can then take you please to the document you find at page 250.394 this is a memorandum to you from Mr Singh dated the 19th of May and what we see if you could go please to page 250.398 Mr Singh a series of people who signed this memorandum in May Mr Weir on the 18th of May 2015, Mr Peter on the 18th of May 2015. I think Mr Singh on the 19th of May 2015, you signed some two months later on the 16th of July 2015. Will you accept that?

10 **MR GAMA**: Yes.

ADV MYBURGH SC: And if you go to page 394 paragraph 1.

“The purpose of this submission is to request the acting Group Chief Executive to approve the contract addendum to Regiments Capital for transaction advisory and support services.”

So this flowed from your recommendation and the acceptance by the BADAC. So the purpose of this submission to request the acting Chief Executive to approve
20 the contract addendum to Regiments Capital for transaction advisory and support services on the 1064 locomotive transaction.

If you go to page 250.395 you will see there is a discussion. Submission was made to the Transnet Acquisition and Disposal Committee detailing the services

rendered by Regiments Capital and the successful outcome.

7. The submission included the request for approval to extend the contract value.

8. The submission was approved in its entirety by the ADC. That we have gone through.

And what you will see then at the end of this document at 398 under the heading Recommendation it is recommended that the acting GCE approves the following:

- 10 1. The value of the contract be increased to a capped amount to R265.5 million and
2. The amounts for the contract period to accommodate the successful conclusion of the funding and hedging agreements with CBD that is China Development Bank and JP Morgan in order to affect the remuneration (success) or risk based fee to Regiments Capital.

Now what I just want to point out to you is that it seems that before you signed this – this memorandum which recommended and the purpose was to request you to approve a contract addendum.

- 20 Before you signed that on the 16th of July 2015 Mr Singh on the face of it authorised the payment on the 11th of June 2015. Perhaps I could take you to page 250.399. You will see that at 250.400 there is an invoice from Regiments in the amount of R189 – or it is R166 plus VAT gets you to R189 and that amount there is a payment advice affecting

payment on the 11th of June at page 399, do you see that?

MR GAMA: Yes.

ADV MYBURGH SC: And you confirm that that is before you signed the memorandum at page 250.398?

MR GAMA: That is correct.

ADV MYBURGH SC: And then what came after that was the second addendum. In other words that was the contract that you were asked to approve and put in place and that second addendum you find at page 250.306. 250.306. And if I could
10 just take you to the end page of that at 250.309 you will see – or I would ask you to confirm please Mr Gama that you then signed this on the 16th of July 2015. It was signed by you and it was signed by Mr Wood.

MR GAMA: That is my signature.

ADV MYBURGH SC: You confirm that?

MR GAMA: Ja.

ADV MYBURGH SC: And what this stirred is it – it put in place the contractual variation, correct and it provided for the payment formalised payment of the 166 success fee.
20 You can go through it if you would like.

MR GAMA: Ja you moving pretty quickly and the words are very small.

ADV MYBURGH SC: Ja absolutely. It is – let us go through it if you would like to more slowly. The preamble I think gives you a sense of what it is.

1.1 Regiments Capital and Transnet signed the first addendum – parties now wish to further varying the MSA. The normal sort of introduction.

If you go to variation of conditions at paragraph 3 at page 250.307 it is incorporating the recommendation that you had made. It is incorporating the decision that was made by the BDS – the BDSA.

You will see that at 311 the scope of the work shall be amended to include the following deliverables. Technical
10 support development of a detailed funding plan.

Next bullet point.

Assist Transnet in the negotiations.

Assist Transnet in negotiating with a number of potential Chinese sources.

So we are amending the scope of the work. Recommending advice and assistance post successful conclusion of negotiations and then it goes on at 313 to provide for the success fee of 166 million.

MR GAMA: Yes.

20 **ADV MYBURGH SC:** You see that?

MR GAMA: Ja.

ADV MYBURGH SC: And we know that you sign this you concluded this contractual variation on the 16th of July by which time Mr Singh on the face of it has already paid Regiments.

MR GAMA: That is correct.

ADV MYBURGH SC: So what I just wanted to ask you is a few questions in relation to this. Firstly was it not irregular to have allowed Regiments to work on this project without a contract being in place? The contract came afterwards once the work was completed.

MR GAMA: From – on the face of it they are saying they had allowed it – they had allowed them to work on it for the previous twelve months. I was still fairly new in the group
10 office here and I think it is one of them it says April 2015 I think I arrived there around the 20th of April 2015 but so when you get there and people say these people have been working here for the past twelve months you say okay and that is what you get told but appropriately I think everybody would want to put the horse before the cart and have the contract in place beforehand.

So that was that but by going to the acquisition committee and informing them that this is what has happened it also regular – regularises that but it is a
20 retrospective approval. It is being approved after the fact when the actual work has been done.

ADV MYBURGH SC: You see Mr Gama perhaps I could also just get your view on this. What we have seen is that Regiments were initially appointment simply to be advisors – the amount that they stood to be remunerated was 50 million

what we have seen from the documents we have gone through is they went from being purely advisors to people that actually did the deal – they were deal makers – they executed this deal.

MR GAMA: That is correct yes.

ADV MYBURGH SC: And you say you were comfortable with that being regularised ex post facto?

MR GAMA: Well that is – that is what the people who were dealing with it said they have done and you have seen a very
10 detailed memo that went to the BADAC that were reading just earlier on that had 99 paragraphs if I am not mistaken.

ADV MYBURGH SC: Ja absolutely. Let me just take you to the – to paragraph 73.

MR GAMA: Ja would you.

ADV MYBURGH SC: And the one you have mentioned.

MR GAMA: Ja.

ADV MYBURGH SC: If you turn up page 1044 you have got...

MR GAMA: Page?

20 **ADV MYBURGH SC**: 1- I beg your pardon. 250.388. You quite correctly pointed out that they were at risk – they were allowed to work there without a contract for twelve months doing something different to what they were contracted to do and it records that they did so at risk at paragraph 73 at page 250.388.

So if – do I understand correctly that what that meant is that if you wanted to you did not have to pay them anything?

MR GAMA: Well if you read the whole thing it says there was an expectation of compensation only on successful completion of the transaction.

ADV MYBURGH SC: Yes but at risk.

MR GAMA: So – so they worked at risk for twelve months with an expectation of compensation only on successful
10 completion of the transaction. So I guess at this point they have now successfully concluded the transaction and therefore that is why there is then the motivation for the actual payment.

ADV MYBURGH SC: But could you find any trace of a procurement event. I mean this is a different contract. So they start off at advising you as pure advisors 50 million. They land up executing a deal getting paid a success fee of 166 can you find any trace of a procurement event in relation to the 166?

20 **MR GAMA:** I do not know if you call it a procurement event but if you go to the memorandum that I signed on the 16th of July.

ADV MYBURGH SC: Yes.

MR GAMA: You...

ADV MYBURGH SC: Is that at 394 – 250.394?

MR GAMA: At page 250.394.

ADV MYBURGH SC: Yes.

MR GAMA: Correct. If you go to point number 5.

CHAIRPERSON: Point number 5 in – on the memo?

MR GAMA: Yes 250.394.

CHAIRPERSON: Okay.

MR GAMA: Maybe to provide context we start at 3 but we – I am not going to go through all of it. It just says upon phase 2 of the engagement being reached it was decided by
10 McKinsey and agreed by Transnet that McKinsey would cede the role. So the – that is how Regiments come – comes into being to start structuring the financial arrangements. So it was initially McKinsey and then it was ceded. That is point number 3.

Point number 4 then says subsequent to the cession agreement the contract period was extended by twelve months.

So in whatever way that it would have been done I was not there so I do not – I do not really know how it was
20 done but that is what they say.

And then in point number 5 Mr Myburgh

ADV MYBURGH SC: Yes.

MR GAMA: It is indicated that Regiments indicated to Transnet they preferred operating model for such engagements is usually based on a risk sharing model for a

success fee.

And then that number 5 the next line says: A submission was approved by the GCE on 17th of April in support of changing the remuneration model. The agreement was then amended by value to reflect a change in the remuneration model as proposed by Regiments. And it says refer to Annexure C. It will be instructive if we – if we went to Annexure C – is it there?

ADV MYBURGH SC: Alright well that we have dealt with Mr
10 Molefe. Is it for your..

MR GAMA: Is that..

ADV MYBURGH SC: Is it before your time.

MR GAMA: Yes.

ADV MYBURGH SC: Can I ask you this.

MR GAMA: So I am saying that all of these things that appear to have been done were approved by the time I arrived there so.

ADV MYBURGH SC: Oh can I just ask you one other
20 question and your comment? I mean did Regiments not now have a conflict of interest because we have seen that they were appointed as pure advisors to advise presumably independently on models and options. And then what they landed up doing was actually executing.

MR GAMA: Mr Myburgh I am not qualified – you have made me read too many documents already in this 00:22:02 I am –

I am a bit confused now. So if you say they were appointed only to be advisory I have seen another document which is a cession document that says they will now do deal structuring so I do not know in terms of the financial people in terms of what their thoughts were and what the discussions were in relation to this. So I am not – I am slightly underqualified Chair to comment on it.

ADV MYBURGH SC: Alright. So have you got any sense as to whether or not the fee that was paid to Regiments was
10 excessive? Are you able comment on that?

MR GAMA: I am not able to comment on that either. What – what they say in that long memo is they try and give formula that was used so they say 10 BBS – 15 BBS – 20 BBS and then here under 75. They say even the – the successful conclusion of this transaction the fee will not exceed 15 basis points on the yield as reflected in the NPV calculations so that – that in itself is probably a manner I know in which they deal with these kinds of things but I do not know if this is the norm whether this is lower than the usual or whether it
20 is higher I – I am under qualified to give an opinion.

ADV MYBURGH SC: Alright. Well I will not tax you on that because some evidence has been led that the market convention and Transnet practice will lead arrangement fee was 6 basis points.

MR GAMA: I do not know.

ADV MYBURGH SC: Alright.

MR GAMA: I would not be able to.

ADV MYBURGH SC: You speak about – you made reference to Mr Mohammedy. Perhaps I could just take you to his affidavit. Could you please go to BB3 and can you turn up page 18. I just want to ask your comment on this. Paragraph 5.5.9 and Mr Gama I do appreciate that you have come in at the tail end of this. Page 18 paragraph 5.5.9. The Transnet Treasury team says Mr Mohammedy had
10 sufficient experience to enter into loan transactions without the need for external support. In my view there was no need for the abovementioned arrangement fees to be incurred.

Do you have any comment about that? What was your sense and experience of the Transnet Treasury?

MR GAMA: I would not able to comment. I think people who were in proximity to the treasury team would be the people in finance but in terms of reputation as I understood it is that Transnet also had one of the finest treasury teams in the country in terms of reputation. So that I know but I would
20 not be able to tell you okay what does that mean – what is it that they can do and what is it that they outsource.

ADV MYBURGH SC: You see it really was – was to that that Mr Mohammedy spoke and ultimately what he concluded on this CBD loan he said it did not make any commercial sense and he reflected that and I quote

“The only possible plausible explanation from my perspective would be that there was an agenda for payment to be made to Regiments ultimately for some entity that existed outside of the system.”

That was his evidence. Did he cannot...

MR GAMA: Which – where are you reading from?

ADV MYBURGH SC: I am reading from page 144 of the transcript of day 30 of day 93. This was his evidence.

10 Perhaps I can read it again.

“The only possible...

MR GAMA: Oh it is something that is in front of you.

ADV MYBURGH SC: Yes.

MR GAMA: Oh okay.

ADV MYBURGH SC: So just bear with me for a moment.

20 “The only possible plausible explanation from my perspective would be that there was an agenda for payment to be made to Regiments ultimately for some entity that existed outside of the system.”

But you – you confirm that the Transnet Treasury was well-equipped and was competent.

MR GAMA: Well I am – that is the reputation that Transnet Treasury had was that it was amongst the finest but I would not be able to tell you what they could or could not do. But a

person of Mohammedy's stature would have been aware what it is that they can do because he had acted as a CFO from time to time. So he would know and I think he had enough time preparing for this to have a look at some of those things but the unfortunate thing about all of this is that we were trying to operate on a patient when something has already gone wrong. And he is now using hindsight. It would be good if he was there and he says let us not have these types of transaction advisors. But he did not say that
 10 when it was happening. And some of us would – would not have been the wiser whether or not it was appropriate or not.

CHAIRPERSON: So is your evidence that based on your own understanding and knowledge of the skills experience and expertise that the treasury team at Transnet, you would not be able to say what – how far they could go in dealing with different transaction but based on what you used to hear or read about them, your understanding is that they were one of the best ...[intervenes]

MR GAMA: Yes.

20 **CHAIRPERSON:** ...Treasury teams in government.

MR GAMA: Ja.

CHAIRPERSON: Yes.

MR GAMA: H'm.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Alright. Just to add to that,

Mr Gama. If you go over the page, page 19, paragraph 5.5.11. Mr Mohamedi says:

“My opinion is supported by the then Transnet Group Treasurer, Ms Makgatho, who wrote an email on 21 August 2014 to Mr Molefe and Mr Singh, pointing out the risks of aligning external party to negotiate significant new loan agreement in isolation of the implications it may have had on our existing debt.

10 Ms Makgatho further pointed out that in her view the pricing of the loan was out of – especially due to the fact that it carried security of loans over the locomotive...

At the time, she estimated the excess cost of the debt to amount to R 3.8 billion over the term of the loan...”

And then the email is attached. Do you want to comment? I mean, did you during your tenure as the GC or acting DG, did you interact with Ms Makgatho?

20 **MR GAMA:** No, I knew Ms Makgatho when I was the CE of TRF. By the time that I became the acting DGC it was Ramasebudi that was the Treasurer.

ADV MYBURGH SC: Alright.

MR GAMA: So my interface with Ms Makgatho was as CO of TRF. I never interfaced with her as the acting GC.

ADV MYBURGH SC: But just going back to the concerns that Mr Mohamedi expressed in his evidence that he thought that there needed to be – it is probably some kind of ulterior motive. I have put to you earlier in your evidence what the Money-flows Investigations has revealed in relation to this payment of R 189 million and you remember I put to you that their investigation has revealed that R 147 million of that, 78% was paid to Albertine with a R 122 million then having been laundered onto Sahara
10 Computers.

MR GAMA: Yes, that is – I think – ja ...[intervenes]

ADV MYBURGH SC: You recall that?

MR GAMA: [Indistinct] [Speaker not clear] Ja.

CHAIRPERSON: Well, the memorandum, I think we looked at a little earlier, which – I cannot remember whether that was appointing or ceding rights from Regiments to Trillian. But I would have thought that where you were asked by people under you to sign a memorandum recommending the appointment of outside
20 advisors, you would first want to know: Why do we need them? Do we not have this expertise internally? Is that something you may have raised with people within Treasury?

MR GAMA: No, Chair. You know, at the beginning of time and people in Transnet will tell you, I do not like

consultants. If we can do things without consultants
...[intervenes]

CHAIRPERSON: Ja.

MR GAMA: ...that is what we do. In fact, when I left Transnet, I had set out something that I call Internal Consultants. People who actually work for Transnet and who can go around, using their expertise, troubleshooting in a different entity. In this instance, you get told that the people have been here for 12-months. They have been
10 working. So you have to assume that they are relevant because why would you keep them for 12-months. But also there is something that we are doing here that we need to clean up a bit.

There is an interchange of words. So you would talk about Regiments advisory. It is a different entity from Regiments Capital Partner. We talked about Transnet – I mean, what is that – Trillian Asset Management. It is a different entity to – but I think everybody gets wiser afterwards to then say: Okay it is not the same entity as –
20 there is a number of these entities. So advisory is the one that was doing GFB, as I understood it, that was advisory.

But the one that is structuring is Capital Partners or whatever the name that is reflected here. So it is different entities. So we must not make the mistake of thinking the advisors have now been appointed as skill(?)

structuring. It does not appear to me that that is what was the case but it is different entities.

But I think when Mr Singh is here you might – he might be much more clearer than me in terms of these distinctions between these entities but I can just see it that sometimes we conflate Regiments Advisory from Regiments Capital Partners.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes, perhaps I could just point out
10 one thing to you. If you have a look at page 380, the third addendum where Regiments is appointed as an advisor.

MR GAMA: 380 of the previous file?

ADV MYBURGH SC: Ja, 250.380. There you will see that it is Regiments Capital (Pty) Ltd that we are talking about.

MR GAMA: Yes.

ADV MYBURGH SC: At 382 ...[intervenes]

MR GAMA: It is not in the other bundle? 380
...[intervenes]

ADV MYBURGH SC: 250.380. So the original
20 appointment ...[intervenes]

CHAIRPERSON: Sorry, Mr Myburgh. I think – is that in
...[intervenes]

ADV MYBURGH SC: Bundle 7.

CHAIRPERSON: Bundle 7.

ADV MYBURGH SC: Ja.

CHAIRPERSON: Page 250. Point?

ADV MYBURGH SC: 380.

CHAIRPERSON: 387 or 380?

ADV MYBURGH SC: 380.

CHAIRPERSON: Okay.

ADV MYBURGH SC: You will see that the original variation, if you have a look at paragraph 3.1, relates to Regiments Capital.

MR GAMA: Ja.

10 **ADV MYBURGH SC:** And you will see at 382, it is signed then by Eric Wood, Regiments Capital.

MR GAMA: [No audible reply]

ADV MYBURGH SC: The agreement that you entered into to regularise the variation of the contract is at 306 and it is also between Transnet and Regiments Capital. Do you see that, at 306?

MR GAMA: Yes, Regiments Capital. So that is like for like. So this is the entity that is dealing with the financial structuring.

20 **ADV MYBURGH SC:** Can I ask you? Were you surprised that mister – now that you see – or did you know that Mr Singh had paid Regiments before you signed the memorandum?

MR GAMA: No, no, no. I just saw it now.

ADV MYBURGH SC: Is that of any concern to you?

MR GAMA: It is concerning. There is one of two things. The first memo, the long one, it was to go to the board to get approval. So the board approved it but in the approval of it, the delegation was to the GCE in terms of authorising payment. So the signing of it before the GCE approves it is irregular.

ADV MYBURGH SC: Can you think of any reason what would have motivated him to do that?

MR GAMA: No, no. You will have to ask him.

10 **CHAIRPERSON:** And you would not know of any circumstances that would justify that, would you?

MR GAMA: No. It was not told to me. There is no way where he says: Look, sign this but I have already paid. There is nowhere where he says that.

ADV MYBURGH SC: I would like to then move to a different topic and that is the procurement of the 95 locomotives. Just give me a second, please.

MR GAMA: [No audible reply]

CHAIRPERSON: Which bundle are we going to go to?

20 **ADV MYBURGH SC:** We are going to deal with the two files together but if I could ask you, Chairperson, to go to the POI Bundle, Bundle 6.

CHAIRPERSON: Yes, I have got it.

ADV MYBURGH SC: I have just a few questions for you in relation to the 95 locomotives. I take it you will recall, and

this is dealt with in the Fundudzi Report commencing at page 36, Chairperson of Bundle 6. I certainly do not intend to take you through all of that Mr Gama. I just want to ask you one or two questions, if I may?

MR GAMA: [No audible reply]

ADV MYBURGH SC: I take it you will recall that in 2012, CSR was appointed as the preferred bidder for the supply of the 95 locomotives. Is that correct?

MR GAMA: Ja, I do not know the dates but if you say it is
10 2012, you can maybe just refer me where you are reading.

ADV MYBURGH SC: Alright. We can go through all of this.

MR GAMA: Ja.

ADV MYBURGH SC: And do you remember what the costs were, the costs of those 95 locomotives were?

MR GAMA: No, no. [laughs]

ADV MYBURGH SC: If you go to page 93 just to get to the date. Page 93 at paragraph – and you know these paragraph numbers are very long. [laughs] 5.5.18.44.
20 According to a letter dated 5 September from Molefe to Pam(?):

“Transnet notified CSR of its appointment as the preferred bidder.

In a letter, CSR was requested to sign the agreement by no later than the close of

business on 6 September 2012...”

Do you see that?

MR GAMA: Okay. So that was the date, ja.

ADV MYBURGH SC: Now I just wanted to ask you, please, to turn to page 39. And, of course, like so many of these things, we start off with presentations being made to the BADC. You see there is a heading at top of 39, BADC of 3 August 2011. I just wanted you to confirm that in 2011 Mr Sharma, if you can recall ...[intervenes]

10 **MR GAMA:** Yes.

ADV MYBURGH SC: ...listed here, was a member of the BADC and a Director of Transnet.

MR GAMA: Yes, I can confirm that.

ADV MYBURGH SC: The evidence before the Commission is that he was then appointed as the Chairperson of the BADC in the following year, in August 2012. Does that record with your recollection?

MR GAMA: I would not know the dates but he did become the Chair of BADC.

20 **ADV MYBURGH SC:** In 2011, it reflects that Mr Mkwanazi – or do you know who the Chairperson of the BADC was in 2011?

MR GAMA: Yes.

ADV MYBURGH SC: Who was it?

MR GAMA: It was the late Bongani Don Mkhwanazi.

ADV MYBURGH SC: Don ...[intervenes]

CHAIRPERSON: Is my understand correct that his surname was spelt with an H as opposed to the one ...[intervenes]

MR GAMA: Yes.

CHAIRPERSON: ...Mkwanazi is spelt without an H.

MR GAMA: That is correct, yes.

CHAIRPERSON: Okay. So the spelling at page 39 would not be correct?

10 **MR GAMA:** That is ...[intervenes]

CHAIRPERSON: Without the H?

MR GAMA: Yes, it must have the H.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: Were you involved in the negotiation of the 95 locomotives?

MR GAMA: No, that I can remember.

ADV MYBURGH SC: I think that I have put to you that the Money-flow's investigations reveals that CSR and Regiments Asia, represented by Mr Essa, entered into the
20 BADC in respect of this acquisition with Regiments Asia being due a 20% commission or kickback and their investigation has also revealed that some 17 million Dollars have to date been paid by CSR in respect of this acquisition.

MR GAMA: No, I am not aware of it.

ADV MYBURGH SC: So we are going to come back to this, I suppose, in more detail when we deal with the 1064 but Mr Gama with your experience, there is something that the Commission needs to consider and investigate is. How if negotiations are done bona fide, how is it possible that there is enough in the pot to fund the 20% or 21% commission on acquisitions of this size? And these 95 locomotives, the contract price was some R 2.5 billion. Do you want to comment? Perhaps you can share with us your
10 insights into that.

MR GAMA: No, I would not be able to comment on that. I am not familiar with that but from what I understand from some of the extracts, the margins on some of these locomotives, they are no more than about 4% that are made by the OEM's as a global standard. And the CSR that you talk about is among the cheapest locomotive manufacturers. So I do not know how possible it is that you could then say there are money-flows of that nature from these contracts. I mean, I do not know.

20 **ADV MYBURGH SC:** Well, none(?) of the negotiators are doing their job properly.

MR GAMA: No, what I am saying is that from the negotiations and from comparisons that I have seen, they have been among the cheapest of the locomotives. It might just mean that maybe the costs could even be lower

but I think when people are confronting the issue, they will see that there is not anyone who has charged us lower than them in terms of locomotives. So to then say that there are also commissions of the nature and the magnitude that you indicate, it baffles my mind.

ADV MYBURGH SC: Right. The last thing I just want to deal with briefly is. The BEE requirement was waived in phase 1 in this tender evaluation process. Are you aware of that?

10 **MR GAMA:** Yes.

ADV MYBURGH SC: Can I take you, please, to page 81?

MR GAMA: [No audible reply]

ADV MYBURGH SC: If I could ask you to go to paragraph 5.5.16.26. I have just one or two paragraphs to take you through here.

20 “In their recommendation to Molefe, Gama and Jiyane recommended option 2 on the basis that option 1 would mean that foreign members did not have local representation with prejudice to the score zero on BBBEE...”

And says:

“They further indicated that option 1 did not support the BBBEE Code of Good Practice Clause which allows for such foreign companies who had registered locally and

start-up enterprises to be deemed to have
BBBEE contribute status of Level 4,
contributing in the first year of operation...”

And then in the next sub-paragraph says:

“The notion that foreign companies were
prejudiced cannot be substantiated in that
Alexco, a South African company, scored
zero points on BBBEE.

10 We determined that recommendations by
Gama and Jiyane to Molefe to amend the
evaluation criteria to exclude BBBEE, the
request was approved by Molefe on 8
June...”

The next sub-paragraph:

“We determined that after the conditions were
change to remove the BBBEE requirement,
CSR scored overall 69% above the minimum
threshold of 60%...”

20 And then, perhaps I could just ask you to
comment on paragraph 5.5.16.30.

“Based on the reasons advanced for the
decision to exclude BBBEE conditions from
stage 1 process as reflected above, we
determined that CSR was the only foreign
entity that benefited from the said decision...”

Do you want to comment on that?

MR GAMA: Chair, I think the problem with some of these reports by people such as Fundudzi is that they are misleading and they will misrepresent the meaning of things because I think they do not understand it, some of these processes and then they will reach conclusions that are very wild. The fact of the matter is, it is a very simple one and it affected all the tenderers.

To evaluate BEE at stage 1 or stage 3, if you do
10 it for all of the entities, it means nothing. It is meaningless. There is no change. It does not change the price of that. But here you get the times(?) of tick box auditors.

Even that – auditing one-o-one, you do not even just tick box, who will then come here and give this Commission an impression that something went wrong by agreeing not to evaluate at level 1 but have evaluated level 3. All of the entities were evaluated at the same time. All that happened here is.

20 They said when we were out on tender we assumed that every entity that is going to tender already has a BBBEE certificate but we were wrong because we have foreign entities who are in the process of creating their South African entities. So can you allow us not to evaluate any of the entities?

And then they used the example of the foreign entities and they said these two, for instance, would be affected by this. It meant that they would drop off but we will still evaluate BBEE. Let us allow them to establish their local office. Let them then go to the – not rating agencies, what do they call it?

The BEE agencies that give people a certificate which tells them whether they are 100% compliant or they are at 50% or they are... Let us then allow them to do this.

10 We will then, at stage 3, evaluate all of the entities for their BBEE credentials. So that is what happened here. Nobody lost any hair or anything as a result of asking for that.

But also in addition to that, the delegated authority which was the JSE could consider this and decide on whether it makes sense, but not only that. You then also go further and you inform the board that in terms of the criteria this is what we said we would do. We did not do this at level, we did it at level 3 because of this. There

20 is not anything sinister or anything that was done.

Each of the entities was evaluated in stage 3. If at stage 3 the entities did not have the necessary BEE then they would fall off. So everybody gets evaluated on a similar thing. There is nowhere where, as a result of not evaluating BEE at stage 1, you are advantaging anybody

over anyone. It does not arise.

ADV MYBURGH SC: I think the question that I wanted to ask you is. You accept that CSR was the only foreign entity that benefited from that decision?

MR GAMA: According to this, there was Alexco and CSR. I do not know when Alexco came from.

ADV MYBURGH SC: Well ...[intervenes]

MR GAMA: But – so this something that the cross-functional team decided(?).

10 **ADV MYBURGH SC:** Sub-27 says:

“The notion that foreign companies were prejudiced cannot be substantiated in that Alexco, a South African company, scored zero points for BBBEE...”

MR GAMA: Well, they would score zero points on BBBEE if during the timeframe that they have been given they are unable to come in and provide the BEE certificate or if their BEE certificate comes in and say they are not complaint. So that is all it is. So their scoring zero points
20 is because of them not complying. It is not because they were evaluated as stage 1 or stage 3. So the issue here of which is one is foreign and which one is not is really neither here nor there. All that was happening here was the cross-functional team says we did not take into account that we might receive bids from non-South African

companies.

So instead of evaluating BBBEE at stage one, let us evaluate everything else except it will be – let us evaluate it at stage 3 to give them time. So if Nelesco, after being given time still could not comply with the BBBEE then they would be scored zero. The same with the CSR itself if, after being given time, it does not comply with the BBBEE, it gets scored zero. Everybody gets scored on one scale, they do not use different ways of scoring these entities.

10 So for me it is really – we are going to get into an argument and have a discussion which is really about nothing about nothing.

CHAIRPERSON: But what was the policy in terms of whether BEE should be taken into account at the first stage or what was the legal requirement as you understood it?

MR GAMA: It is not a legal requirement.

CHAIRPERSON: It was a policy requirement.

MR GAMA: It is an evaluation criteria.

20 **CHAIRPERSON:** Yes, so it does not come from the policy.

MR GAMA: No.

CHAIRPERSON: Where does it come from?

MR GAMA: It is an evaluation where you say to everybody, as they take the documents, this is how we are going to evaluate you and then you come in and then you

say here is a bidder. Through no fault of their own
...[intervenes]

CHAIRPERSON: No, no, hang on, let us establish the rules. When there was – there were criteria that were set from the beginning, is that right?

MR GAMA: Yes.

CHAIRPERSON: The criteria included BEE, is that right?

MR GAMA: Yes.

CHAIRPERSON: Did the criteria that were required to be
10 implemented, before it was discovered who had BEE, who satisfied and who did not satisfy, was the requirement that that criterion of BEE should be a factor at stage one?

MR GAMA: Yes.

CHAIRPERSON: That was the position?

MR GAMA: That was the position.

CHAIRPERSON: Okay and then what happened was at a certain stage that was changed and it was decided that BEE as a part of the criteria would be applied at stage 3.

MR GAMA: Yes.

20 **CHAIRPERSON**: Is that right?

MR GAMA: Yes.

CHAIRPERSON: And you say that was based on what, on the fact that some of the companies were foreign companies?

MR GAMA: Yes, so the cross-functional team says here is

our RFP. As Transnet we did not foresee that there could be entities – there could be foreign entities who do not have a local domicile. They then say this is the criteria, we understand it, they then say we think it will be prejudicial for entities who are just coming into the country and they such as Nelesco and Seza to evaluate BBEE at stage one, they are still setting up their offices. We will evaluate BBEE in the same manner that we evaluated, we do not change the rating but the PPM, which is the

10 Transnet procedures manual, it allows the person who has the delegated authority to consider this and say does it change the price of eggs? Will that be anybody who is going to be prejudiced as a result of this? Now we are going to evaluate all entities at stage 3, where we are not changing the criteria, we are still going to evaluate BBEE but we are not going to evaluate it at – so there are six stages of this thing. So the entity will still fall off it does not comply but at Transnet you are allowed to approach the delegated authority to say can we move this from stage 1

20 to stage 3 and that is what happened here. So there is nothing that changed, the criteria remained the same, all of the bidders were evaluated at stage three. So I am saying here, Chair, that we can talk a lot about these things, there was no one who was being prejudiced.

CHAIRPERSON: Ja, no, no, I understand, you have made

the point, Mr Myburgh will pursue his questions. On the fact of it my immediate reaction would be unless one was talking about a situation about certain exceptional circumstances, I would have expected that if I am Transnet and I say these are the criteria that are going to be used to determine who actually gets this contract, the fact that somebody says oh, I just registered my company yesterday so give me a chance to go and register this or get that certificate, is neither here nor there, hard luck. If

10 somebody says I am coming from France or whatever, I did not know about what the requirements were in South Africa, hard luck. If you want to do business in South Africa, you want to get contracts in South Africa, familiarise yourself with what the requirements in South Africa are. That would be my immediate reaction but it may well be that when one looks deeply, it might change.

MR GAMA: Ja. No, here is a group of people who are exercising their minds, they are saying for instance, perhaps we did not think properly about this thing that

20 there could be foreign entities who are not domicile in South Africa because there are foreign entities, most of these entities ...[intervenes]

CHAIRPERSON: They must familiarise themselves with South African situation and comply.

MR GAMA: Ja, when people are coming through for the

first time you can give them that. The cross-functional team, they thought through this, it is not something that they just - they thought through it, they looked at options and then they said okay, we think this is a better option and then they then said can we take it to the delegated authority to look at it? And then the delegated authority could then agree or disagree but if the delegated authority can see that there is no one who is going to be prejudiced as a result of evaluating. We are not saying we will not
 10 evaluate BEE, we are just saying we will not do it on stage one, we will do in stage three and then that is what happened but if you would rely on Fundudzi type of reports, there is a lot of things that you will find here which just says that, you know, you should be a robot, you must not apply any logic in terms of dealing with things and then that is not the right way to do it.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. I would like to turn to the 100 locomotives, if I may?

20 **MR GAMA:** Yes.

ADV MYBURGH SC: And I just want to present something of an overview before I get into Mr Callard's affidavit and your response. You will recall, Mr Gama, that CSR – now we are talking about 100 20E electric locomotives. You will recall that CSR was awarded the tender on

confinement replacing Mitsui. Do you remember that?

MR GAMA: I just want to go back. Can you just remind me where is my...

ADV MYBURGH SC: I am going to come to your affidavit.

MR GAMA: Ja, can you point me to it?

ADV MYBURGH SC: Let me take you to the page, if you want.

MR GAMA: Ja.

ADV MYBURGH SC: Bundle 6, page 140.

10 **MR GAMA:** Page 140? It is just useful that we – okay.

ADV MYBURGH SC: So I am just presenting an overview. If you go to the middle of the page, 5.6.18 sub 1:

“As indicated above we determined that the board approved a confinement of 100 locomotives to CSR on 24 January, estimated cost of 3.8 billion. We determined that Molefe concluded an agreement with CSR on 17 March for the supply of 100 locomotives at a cost of 4.38 billion.”

Do you see that?

20 **MR GAMA:** 3.8, ja.

ADV MYBURGH SC: Now are you in a position to confirm because again the timeline here becomes important. This LSA was concluded on the 17 March 2014 which was the same day as the LSAs were concluded in respect of the 1064 locomotives. Do you remember that?

MR GAMA: Ja, I would not know on what date. I know that the 1064 was on that particular date but I cannot remember that there was any other on the same day.

ADV MYBURGH SC: Alright. Well, let me take you to page 183. Now this the section dealing with the 1064 and we will come to one of the agreements in time. I will actually show you the one concluded by CNR (sic) but at paragraph 5.9.12.2:

“We determined, however, by that time...”

10 And that is dealing with the increase in the ETC.

“...the locomotive supply had already been signed on or about 17 March 2014.”

So at least on that the 100 locomotive LSA and LSAs in respect of the 1064 were concluded around about – either on the same day or around about the same. Do you have a recollection of that?

MR GAMA: No, no, no.

ADV MYBURGH SC: By the way, Mr Gama, you did not sign the LSAs. From what I have seen they were signed by
20 Mr Molefe and Mr Singh. Would that be correct?

MR GAMA: What do you refer to as the MSA?

ADV MYBURGH SC: The LSA, the actual locomotive supply agreements concluded in relation to the 1064 locomotives. I am just simply asking you did not yourself sign the agreements.

MR GAMA: Ja, ja, that is – so I do not recall what the dates were here.

ADV MYBURGH SC: Alright. Now at this time in March 2014, Mr Sharma was the Chairperson of the BADC.

MR GAMA: It is possible.

ADV MYBURGH SC: And a director of Transnet.

MR GAMA: H'm.

ADV MYBURGH SC: Is that right?

MR GAMA: It is possible, I cannot remember when their
10 term expired.

ADV MYBURGH SC: We will come to some documentation in due course.

MR GAMA: Yes.

ADV MYBURGH SC: And then I think I have put this to you already. Mr Essa, representing on the money flows investigation, representing Regiments Asia concluded a BDSA again with CSR for a 21% kickback. To date payments of 124 million dollars have been made under that BDSA and the one in relation to the 359 electric
20 locomotives that were part of the 1064.

MR GAMA: Sorry, can you repeat that?

ADV MYBURGH SC: Mr Essa, on behalf of Regiments Asia, concludes a BDSA with CSR for 21% kickback in relation to the 100 locomotives. To date 24 million dollars have been paid under that BDSA and the BDSA that he

concluded in relation to the 359 electric locomotives that were part of the 1064 contract. Do you want to comment on that?

MR GAMA: It sounds like telephone numbers. The 124 million?

ADV MYBURGH SC: 124 million dollars.

MR GAMA: In respect of the 100 locomotives?

ADV MYBURGH SC: The 100 locomotive and the 359 electric locomotives.

10 **MR GAMA:** Oh, a combination?

ADV MYBURGH SC: Yes.

MR GAMA: No, I do not know anything about that, I am hearing it from you.

CHAIRPERSON: Maybe we should take some break? It has just gone past quarter to eight. Let us take a ten minutes break.

ADV MYBURGH SC: Thank you, Chair.,

CHAIRPERSON: And then we will continue.

20 **ADV MYBURGH SC:** Mr Chairperson, could you give us a sense of how deep into the night you would like to go so we can make our plans and also if I could look and see what I can finish sensibly in that time?

CHAIRPERSON: Yes, let us do that. From your side, how much – how far are you from finishing with Mr Gama?

ADV MYBURGH SC: I am still some way.

CHAIRPERSON: Yes.

ADV MYBURGH SC: What I would like to try and achieve this evening is to finish at least 100 locomotives.

CHAIRPERSON: Yes, okay. I can go for quite some time. From my side we can just go – we can go to nine, we can go beyond nine, I must just check with the staff and technicians. From your side, Mr Gama, you are fine?

MR GAMA: I must just check if my team has got the tank to go beyond nine o'clock.

10 **CHAIRPERSON:** Okay. Okay, alright. Your counsel is fine.

ADV OLDWADGE SC: Mr Chair, we understood that we would run until about eight o'clock. It is now ten to eight.

CHAIRPERSON: Yes.

ADV OLDWADGE SC: Regrettably, we also have other commitments. Is it possible – because we would like to make those arrangements. I am under pressure with papers that have to be filed elsewhere and so forth.

CHAIRPERSON: Yes.

20 **ADV OLDWADGE SC:** Is it possible that we proceed until 8.30?

CHAIRPERSON: The only difficulty is we need to finish by tomorrow with Mr Gama's evidence. If the position is that we should be able to finish tomorrow then maybe there might be no problem but I think one should first have an

assessment. I think Mr Myburgh probably will not finish today or it depends – what can you say, Mr Myburgh, because when we have an idea when you might finish, whether it is tomorrow or after another hour or whatever?

ADV MYBURGH SC: No, it is going to be some time, Chairperson. The only comment that I wish to make is – I mean, I think that we must obviously finish tomorrow so if we are only going to go until half past eight tonight then I suppose we must commit ourselves to going on for as late

10 as we have to tomorrow night.

CHAIRPERSON: Yes because I - you know, I think the bottom line is we must finish tomorrow so - because we just do not have the time. You know, we are close to the end of May. So, I do not know, in the light of that and maybe bearing in mind how much time you might need for re-examination, if any, after Mr Myburgh, what is your assessment?

ADV OLDWADGE SC: Mr Chair, there is certainly going to be a need for re-examination.

20 **CHAIRPERSON:** Yes.

ADV OLDWADGE SC: There is, of course, a discussion that has ensued between Mr Myburgh and myself.

CHAIRPERSON: Ja.

ADV OLDWADGE SC: And in relation to that, it was suggested that we consider whether we do not file a further

affidavit.

CHAIRPERSON: Ja, to combine certain things.

ADV OLDWADGE SC: By Mr Gama that deals with those issues. It is not a matter that we have had a sufficient time to consider, it was in fact suggested this afternoon.

CHAIRPERSON: Yes.

ADV OLDWADGE SC: But to come back to the conclusion of his testimony in chief, if I may term it such, we are also available to start earlier tomorrow. We only started after
10 five today but we can do much earlier tomorrow, if that is needed.

CHAIRPERSON: Oh, is that so?

ADV OLDWADGE SC: Yes.

CHAIRPERSON: When you say much earlier, what do you have in mind?

ADV OLDWADGE SC: I have other commitments from about six o'clock tomorrow morning but certainly by midday I would have dealt with those matters and we can start by about 12 o'clock I would imagine, subject to my client's
20 availability.

CHAIRPERSON: Yes. Well, of course, tomorrow I have got a day session, Inspector General is giving evidence tomorrow. That is meant, I think if I recall correctly, to be the whole day but he might finish before four o'clock, so – at this stage your sense of how much time your re-

examination might need would be what?

ADV OLDWADGE SC: At least an hour an half, Mr Chair.

CHAIRPERSON: At least an hour and an half. Okay, Mr Myburgh, can we go at least up to nine today?

ADV MYBURGH SC: Yes, Mr Chair.

CHAIRPERSON: But, of course, if we stop at nine because from my side we could have gone even up to ten as well, then tomorrow it would have to be – the arrangement would have to be that one, you are able to be
10 here earlier than four o'clock, not on the guarantee that we will start earlier but on the understanding that if we finish earlier with the day witness then we can start but that we would then go on right into the night, to try and finish. Would that be fine?

ADV OLDWADGE SC: As you please, Mr Chair.

CHAIRPERSON: Okay, Mr Myburgh, maybe we could go up to nine today and then ...[intervenes]

ADV MYBURGH SC: Push through tomorrow.

CHAIRPERSON: Ja and then tomorrow and I think what
20 would – when we adjourn this evening we could talk about what time everybody could be here tomorrow.

ADV MYBURGH SC: I think that, DCJ, it is very important to make an accurate assessment of that because if we have to come here and kick our heels, it is not the most efficient use of time.

CHAIRPERSON: Ja.

ADV MYBURGH SC: And perhaps we could be on standby and then your registrar might tell us.

CHAIRPERSON: Yes, no, no, no, that...

ADV MYBURGH SC: But once you travel here, there is very little you can do.

CHAIRPERSON: Ja, ja. No, no, I think that could be done particularly if all parties are not too far from here. So no, that could be done. I think by lunchtime we would
10 have an idea. Mr Pretorius will be leading Dr Dintwe, we would have an idea and then maybe you could make contact with Mr Pretorius.

ADV MYBURGH SC: At lunchtime, yes.

CHAIRPERSON: And give an assessment, ja. And then you could share that with counsel for Mr Gama.

ADV OLDWADGE SC: Mr Chair, might I then work on the assumption that we are not going to deal with re-examination tomorrow given the submissions by Mr Myburgh and that that will have to be held over to some
20 other date alternatively that that be incorporated in a further affidavit by my client?

CHAIRPERSON: Two matters. One, I would like us to try and finish tomorrow. When I say finish, I mean finish all oral evidence including re-examination if there is re-examination. That is point one.

Point two, if I understand you correctly, what you and Mr Myburgh have started talking about seems to coincide with an idea that I have begun to have in regard to other matters where there are challenges in terms of time in terms of re-examination, if the discussion between the two of you is that instead of having oral re-examination, an affidavit could be furnished which would clarify whatever matters need to be clarified because the regulation says the purpose of re-examination is to clarify, 10 then I would have no problem with that. So if tomorrow we are done but there is no time for re-examination but there is an agreement that such an affidavit can be furnished to clarify whatever you would have wanted to clarify in re-examination, that would be fine with me.

ADV OLDWADGE SC: The only added difficulty to all of this is of course the issue concerning Mr Todd's application for cross-examination.

CHAIRPERSON: Oh.

20 **ADV OLDWADGE SC:** And so I need to consider it in that context.

CHAIRPERSON: Yes, yes.

ADV OLDWADGE SC: So there is much to be considered within a very short space of time.

CHAIRPERSON: Yes.

ADV OLDWADGE SC: And that is why I would like to know

whether we have acquired tomorrow to present the re-examination or not.

CHAIRPERSON: Okay. No, no, that is fine but my recollection is that the issue relating to Mr Todd was a very narrow issue. That is my recollection so if it remains a big deal, I know that we said let me hear Mr Gama's evidence and then we can see how much dispute is left after that. I am sure that if that is all that is left we could discuss and find a way.

10 **ADV OLDWADGE SC:** As you please, Mr Chair, thank you.

CHAIRPERSON: Okay, alright. Alright, so let us just take a ten minutes adjournment now and then we will return. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, let's continue.

ADV MYBURGH SC: Thank you. I would like to carry on then with the 100 locomotives. Can I just ask you Mr Gama so you have explained to us the role that you played
20 in the 1064 transaction. Now what role did you play in relation to the 100 locomotives just broadly speaking?

MR GAMA: It is such a long time ago, I ...[intervenes]

ADV MYBURGH SC: Would it have been the same or different to the 1064?

MR GAMA: I think this one was the confinement of the –

the 100 they relate to the coal line, as you say broadly speaking, maybe too broad. I remember that there was a confinement that we tried unsuccessfully to do through Mitsui and then ja, it was really around taking the presentations to the Group Executive Committee and then being on standby if one is required for the ...[indistinct – dropping voice]

ADV MYBURGH SC: Mr Gama what I am going to do is I am going to ask you to turn to Mr Callard's affidavit, this is
 10 Exhibit BB4a, BB4a. Chair in dealing with the 100 locomotives the key part of it is the sequence of events that Mr Callard sets out from page FQC106 through to 13. Now what we have seen from your affidavit is that I mean a lot of this is common cause between you and Mr Callard, but perhaps I can just run through this. He says at paragraph 26 that I prepared the first business case in April and a revised business case in July, further changes ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, what is the page,
 20 I am at 106.

ADV MYBURGH SC: Page 6.

CHAIRPERSON: Page 6, okay. Okay, alright, I've got it.

ADV MYBURGH SC: So dealing with the 100 locomotives he says he prepares the first business case at 26.1 he says in September or October I was requested by Gama to

update the memorandum to the BADC for an additional 119 e-type equivalent electric locomotives, memorandum dated 15 October 2013 was signed by Gama and others, at 27 the said memorandum recommended confinement to Matsui and company Africa Railway Solutions, a subsidiary of Japan Matsui & Company Limited on the basis of:

1. Compatibility with the existing 119 e-type locomotives used on the coal export line,
2. Availability of facilities without having to establish
10 new facilities,
3. Saving and design, testing and type approval and fastest possible delivery.

Then he is – at paragraph 29, he says that 19 e-type locomotives is a heavy haul locomotive, specifically intended for use on the coal export line, he goes on to explain that.

He says at paragraph 30 that the memorandum specifically stated that the e-20 type ie 95 locomotives, the one we spoke about, recently awarded to CSL was not
20 suitable as it is a general freight locomotive of 22 tons per axle. At 31 and further the memorandum also stated that the CSR 90 e-type locomotives still had to be tested and only thereafter would it be possible to say to what extent it could replicate the heavy haul capabilities of the 19-e.

Furthermore an extension of the 95 20-e contract

would not be acceptable procurement mechanism as it would entail material, design, amendment that could be challenged through the procurement procedures manual.

Then he goes on to say at 32:

“I was informed through an sms from Gama on 21 October that the Group Chief Executive, Mr Molefe had withdrawn the memorandum at the BADC meeting on the same day.”

And then at 33:

10 “On 22 October 2013 I sent an sms to Gama requesting direction on the way forward. Gama replied via sms as follows: ‘I believe it remains withdrawn, we are now trying to see how we can get leased locomotive from Queensland DC just said to me if i need anything it must be less than a billion if it is capital and for a confinement it must be within his authority.’”

Then he says at 34:

20 “I later prepared an updated version which Gama signed on 25 November 2013. On the afternoon of Friday the 18th of January I received the following sms from Gama ...”

And he sets that out. If you go to paragraph 38:

“On Monday the 20th of January I mailed a PDF version of the revised business case to Gama.”

39:

“On the morning of Wednesday 22 January I received a mail from Alechi from Supply Chain Services requesting my assistance in formatting by memorandum of the previous Monday. When I perused the memorandum I noticed that the memorandum had been changed to give effect to confine an award to CSR for 100 electric locomotives.”

10 And then at paragraph 40 he says:

“a comparison of my original business case of 20 January with that received from Alechi revealed that the business case had been clearly amended *inter alia* ...”

You see at 40.2:

“The motivation to confine to ...[intervenes]

CHAIRPERSON: Sorry Mr Myburgh would you arrange for me to get – I think there are two pages missing here.

ADV MYBURGH SC: Oh, I beg your pardon.

20 **CHAIRPERSON:** Ja, I don't have pages 9 and 10, which would be – ja I don't have pages 9 and 10 so the paragraphs you are reading I don't have, but they can be inserted later on, I will just listen to you, ja.

ADV MYBURGH SC: Thank you Chair. So he undertakes a comparison between the two business cases, he

comments *inter alia* that the motivation to confine to ...[indistinct] had been removed and replaced with a confinement to CSR. At paragraph 42 at page 10 he says he was taken aback by these unilateral changes in the memorandum. He says at 43 as the prime author of the business case/memorandum I was not consulted, and then at 44 he says he:

10 “deliberated long and hard on Wednesday evening on the implications of what I have learnt and on Thursday afternoon 23 January I emailed Game and Gianni expressing my concern at the unilateral change to the business case/memorandum I submitted on Monday in respect of the 19 e-type heavy haul locomotives to an unspecified general freight locomotive confined to CSR.”

At paragraph 45 my mail – this is at page 11:

20 “My mail to Gama and Gianni opens with “this is a difficult mail to write. In helping to format a recent version of the 180 locomotive business case on Wednesday 22nd I noticed that the case was changed from that which I had submitted on Monday. This mail is because of the nature of the nature of those changes and implications, the implications are technical and in the rationale for the acquisition which was speedy delivery to

mitigate MDS volumes as risk.”

And at 46:

“The essence of my comments *inter alia* covered the following issues.”

Then at 48 he says that:

“During the preparation of my statement the Commission provided me with three pertinent emails from which it is evident that Gama seemingly Molefe had acknowledged my concerns per the email trail below.

10

1. The first email was sent from Gama to Singh late on 23 January, essentially reflecting my concerns. It reads “Hi Mr Singh, I am afraid the submission of the 100 locomotives is a mess and will need to be withdrawn. The 20 e-locomotive is a 22 ton per axle locomotive suitable for the GFB while the 19 e-locomotive is a 26 ton per axle will be suitable for the coal line. The two locomotive types are not inter-operable. While CSR can make additional locomotives in China in a very short space of time to mitigate against India’s volume loss this will be counter to our localisation strategy and will have to be spelt out. The 85 locomotives to be assembled by TE has not yet commenced, so we cannot yet make

20

any argument as this would reduce the risk.

2. The second mail was sent to Gama on the morning of 24 January saying that we would discuss the matter this morning.
3. The third email also on the morning of Friday 24 was where Singh forwarded Gama's mail to Molefe for information."

Then we get to the BADC meeting on the 24th of January;

10 "the minutes of the BADC meeting on 24 January record the attendance of Molefe and Singh and the partial attendance of Gama and Gianni. The BADC discussed the acquisition of the 100 class 19 e-electric locomotives, BADC pack containing the revised submission was signed by Singh and Molefe. The minutes do not reflect that the BADC was informed of my concerns raised in the email correspondence above."

At 51:

20 "The minutes reflect that the BADC was misled by management as to the validity of the confinement process by

1. Creating the impression that the 26 ton heavy haul CSR locomotive existed when in fact this was not the case.
2. Using Chinese manufacturing facilities to

motivate for the speedy delivery which would have negated local content requirements, see Gama's email in this regard.

3. Purporting that the confinement was in compliance with the procurement procedure manual when no previous product existed."

52:

10 "It was accepted that the locomotives could or should not be confined to Matsui then the correct procedure would have been to go out on open tender."

53:

"The 100 locomotives were confined to CSR."

And then at 54:

"On 4 February 2014 I received an sms from Gama in response to my email of 23 January stating I have just seen your email, I would explain to you the GC is thinking, this was not followed up etcetera."

20 So that is the kind of broad architecture and sequence of events. Now as I mentioned to you Mr Gama much of this is – you don't take issue with and you provide your own exposition over this space, I think it is on eight pages and I am going to ask you to go through that.

You will find your response to what I have taken you

through at Bundle 7, page 250, page 1, 250.150, this is from your third affidavit. You start off at paragraph 42 ad paragraph 26 and that deals with the original business case/memorandum. You say it is correct that the memorandum dated 15 October was in fact the memorandum that was submitted to the Transnet BADC for the acquisition of the 100 class 19-e electric locomotives, the acquisition was to serve the coal line, do you confirm that?

10 **MR GAMA:** That is correct.

ADV MYBURGH SC: You go on to say at sub-2:

“It was my role not that of Callard to peruse/review the motivation and the approval of the business case, however my role was limited to submitting the business case to the GCE of the Transnet whose function it was to submit the business case to the BADC. In turn it was the BADC’s function to submit the business case to the Board for final approval.”

Is that correct?

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

ADV MYBURGH SC: And you go on to say then that the Board was required to submit the business case to the Minister for approval. Is that right?

MR GAMA: Yes in the event that PFMA approval was required ja.

ADV MYBURGH SC: And you say in this regard for me to attend BADC meetings I had to be invited by the GCEO to support him when he presented the business case if he found it necessary, is that right?

MR GAMA: That is correct sir.

ADV MYBURGH SC: We know that you weren't a member of the BADC.

MR GAMA: Yes I was not.

ADV MYBURGH SC: Then you go on to say in response
10 to paragraph 32, you say:

“It was strange for Callard to simply invite himself to the BADC meeting. This in circumstances where he hadn't been requested to attend such meeting.”

MR GAMA: He had not.

ADV MYBURGH SC: He had not, I beg your pardon. In many instances I would invite him to attend the meeting so as to support me and me in turn supporting the GCEO. Is that correct?

MR GAMA: That is correct yes.

20 **ADV MYBURGH SC:** Then I want to take you if I could to your paragraph 49, Ad para's 44 and 45 of Callard, and what Callard is dealing with there is the change in the memorandum. You say at 49.1 the changes to the memorandum were affected by Singh who signed the memorandum on 21 January 2014. The memorandum was

then signed by Brian Molefe on 22 January 2014. It should be noted that my signature was not appended to FC14. I was not a party to what is alleged to have been the unilateral amendment. It was at all times known to Callard that I supported the confinement to Matsui and Company. Do you confirm that?

MR GAMA: That is correct.

ADV MYBURGH SC: Now Mr Gama before I go further into your affidavit could I ask you please to go back to
10 Bundle BB4A and could I ask you to go to this memorandum, change memorandum, which you find at page 244.

CHAIRPERSON: What's the page again?

ADV MYBURGH SC: 244 Chairperson, that is FQC244.

CHAIRPERSON: Okay. I've got it thank you.

ADV MYBURGH SC: And you will see that it is signed at page 267, I think that is what you're referring at your paragraph 49.1, signed by Mr Singh on the 21st of January and then signed by Mr Molefe on the 22nd of January, is
20 that correct?

MR GAMA: Yes.

ADV MYBURGH SC: So perhaps I could just stop here and ask you how on earth does this come about? Mr Callard works on the memorandum of the business case, you are the business owner, these locomotives are for the

use presumably of TFR, how does from one day to the next this memorandum change so fundamentally, or the confine change so fundamentally, from Matsui to CSR?

MR GAMA: No, thank you. The – or from what I recall I think as Callard has indicated to you sometime in October or November the submission had been withdrawn from the BADC, ostensibly because we had already confined to Matsui I think at least two times, and this would have been the third confinement. So it was felt by the BADC that this
10 would not be correct, and that I had in persisting with this Matsui and this was the third submission, so it appeared that the BADC rejected my proposal on that date and therefore it was ...[indistinct – dropping voice] so I learnt from Mr Molefe that that submission would have been stillborn because of the sentiments that were experts by the BADC that we'd already done it twice and a third one was not appropriate.

CHAIRPERSON: So – you swallowed the last word, was not appropriate?

20 **MR GAMA:** Yes.

CHAIRPERSON: Ja, okay.

MR GAMA: Or they would not welcome it, yes. So that's how we got to renew confinement to CSR which as indicated in what Mr Myburgh said I had then – I had a telephone discussion with Callard, which I think he does

not recall, he had phoned me and I think maybe at the same time he also sent me the email, and so we had had a discussion where he indicated to me that look there is a new submission and that new submission is to CSR and me and him then agreed that we did not currently have any experience of CSR doing a heavy haul locomotive which was the 26 ton, the axle locomotive. It was on that basis that I then sent an email to Singh that evening to say look this is what I hear that has happened, I think it would not
10 be appropriate for us to try and confine this type of locomotive because we had no experience of it, at least in our country, the experience that we had is that one of Matsui.

I was still at that time unaware that the BADC had rejected completely any suggestion that Matsui should have the – to have this confinement or this procurement confined to it, so I learnt it after that submission from – so I think then it was at that time that Mr Molefe and Mr Singh had then submitted the CSR memo to the BADC because if
20 you look at the time period it would have been submitted a day before the actual meeting, because Mr Molefe had signed it a day before the meeting, so that is how it came about, that there was that new CSR memo.

ADV MYBURGH SC: Let me take you back to your affidavit, we have got to paragraph 49.1 where you said at

the end it was at all times known to Callard that I supported the ...[indistinct – dropping voice]. If I can take you over the page, page 153, that is 250.153, at 51.2 I recall having received a telephone call from Callard during the evening of 23 January when he informed me that the confinement to Matsui had somehow been changed to a confinement to CSR.

At 51.3

10 “I indicated to him that I would liaise with Singh to establish what was going on, I sent the email referred to during the evening of the 23rd of January after my conversation with Callard, the email was premised on input provided by him. At that time I had not seen the email which Callard had sent to me.”

You say at sub-4 I agree with Callard concerning the matters raised by him, is that correct?

MR GAMA: Yes.

20 **ADV MYBURGH SC:** And then over the page 250.154 at 53.1:

“I did not support the confinement to CSR at well known to Molefe and Singh. The memorandum to the BADC was not signed by me.”

That we have seen, correct?

MR GAMA: Yes that is correct.

ADV MYBURGH SC: Now I want to get to the minutes, and perhaps what I could ask you to do is to turn up and work with them together, BB4a, and go to page 228 there, you will find the minutes of the BADC meeting on the 24th of January, and then I will take you through your commentary on them, in your affidavit.

CHAIRPERSON: What page on 4a?

ADV MYBURGH SC: Page 228 Chairperson.

CHAIRPERSON: Thank you.

10 **ADV MYBURGH SC:** What we see on that page is these are the minutes of the BADC meeting of 24 January, present Mr Charne, he was the Chairperson, correct?

MR GAMA: Yes.

ADV MYBURGH SC: And then in attendance Messrs Molefe and Singh and then we say – you see partial attendance by yourself, is that correct?

MR GAMA: Yes.,

ADV MYBURGH SC: If we then go to your affidavit at page 215.154, you say at paragraph 54.1:

20 “I have read the minutes particularly at paragraph 5.22 of the meeting of 24 January of the BADC.”

You say at 54.2:

“It is clear to me that no one from TFR would have presented anything of the kind reflected in the minutes. As and by way of example “management informed the

committee that it was decided that a 26 ton heavy haul line by GE would perform better than a Class 19-e Matsui. aforesaid caption is nonsensical in that not only is the heavy haul line not locomotive but also that General Electric GE only manufactures diesel locomotives and therefore the specifications cannot be compared with those of electric locomotives manufactured for instance by Mitsui. Then you quote again at 54.3.

10 “Management motivated for the confinement
in favour of GE. This was motivated by a
submission that was previously withdrawn
due to reputational issues that had
emanated from an old newspaper article.
Management requested for a contract
extension for the Class 43E diesel
locomotives by CSR. From the oh and
foregoing it is clear that confusion reigned
between the procurement of diesel
locomotives by GE (43D) and the
20 procurement of electric locomotives either
from CSR and or Mitsui. Consequently no
alliance ought to be placed on the aforesaid
submissions as they are clearly wrong and
not representative of what had been
discussed. However what is significant was

the fact that whilst I supported the confinement to Mitsui the BADAC had rejected my said proposal on the basis as I understand it that such confinement would have been the third with Mitsui. As it so happened Brian Molefe later informed me that my Mitsui submission would have been stillborn.”

And then at sub 4.

10 “Singh and Molefe had removed my memorandum and prepared a new one which they signed and presented to the committee recommending CSR as the preferred supplier.”

You want to comment on that further?

MR GAMA: Ja. Well that is what it is I think when they realised that the Mitsui submission would not be supported by the BADAC they then put in CSR. I think with us as people in the railway we had not experienced anything of
20 heavy haul for – from CSR so we would not have made a recommendation that CSR should do it. It turned out much later that CSR did make such types of locomotives but in China and not – we had not had sight such a type of locomotive ourselves. So the confinement route would not have been one that would support – we would have

supported for CSR because we did not know anything about their heavy haul capabilities.

CHAIRPERSON: Is your evidence to the effect that prior to this changed memorandum for the one that was recommending CSR – confinement to CSR prior to that memorandum being presented to the committee you were not aware that there was a change now the confinement was for CSR?

MR GAMA: The – the only bidder for 00:03:39 was the
10 discussion that I had had with Callard.

CHAIRPERSON: Callard yes.

MR GAMA: Which was the evening before.

CHAIRPERSON: Yes.

MR GAMA: I had then sent the email to say look I am told that this is what is happening but that you guys are not you know going with Mitsui you going with someone else and I think you might not be able to find what we are looking for.

CHAIRPERSON: That was an email to Mr Singh?

MR GAMA: That is correct yes.

20 **CHAIRPERSON:** Yes. Which he never responded or did he respond?

MR GAMA: The response according to the records he responded the following morning which I did not see where he said we will discuss it in the morning.

CHAIRPERSON: But it was never 00:04:32.

MR GAMA: Ja, no it was never followed up.

CHAIRPERSON: Okay. Would that be quite unusual that the committee would discuss a matter such as that that relates to a particular division and the head of that division is not aware of the latest position that is being presented to the commission.

MR GAMA: Yes, no it is – it was unusual because I was 00:05:09 on the ...

CHAIRPERSON: Ja.

10 **MR GAMA:** Ja.

CHAIRPERSON: Ja. Mr Myburgh.

ADV MYBURGH SC: And then as I understand it your input was not sought on the revised business case.

MR GAMA: No it was not.

ADV MYBURGH SC: So Mr Gama perhaps you can assist with this. Do I understand – I mean was there a meeting of the BADAC before the 24th of January where it decided against the confinement to Mitsui or was that an informal discussion that were had with Mr Singh and Mr Molefe that
20 then caused the change in the business case and the memorandum and then the presentation of the revision on the 25th of January or do I have the sequence wrong?

MR GAMA: No they had been a meeting but I had not received any feedback from that particular meeting. There had been a meeting I think in November of 2013 where the

BADAC had presented this but I had not been privy to this so I continued to send updated what do you call it – Mitsui confinements to say I now have an update and this is what it now looks like can you put it into the pack? But I had not received this feedback. I only received the feedback after the 24th of January that look this thing would have been stillborn these guys had long rejected any procurement from Mitsui.

CHAIRPERSON: But you absence from that meeting of the
10 24th of November you said you were absent in that meeting.

MR GAMA: No I had not been at the meeting. There was never a need for me to go to all the meetings.

CHAIRPERSON: Ja.

MR GAMA: If I was required at the meeting I would then be.

CHAIRPERSON: You would be asked.

MR GAMA: I would be asked ja.

CHAIRPERSON: Even if a matter relating to your division was going to be discussed would you need to be invited or?

20 **MR GAMA:** Yes I would need to be invited. I mean the GCE can make up his mind whether or not .

CHAIRPERSON: He wants you to come along.

MR GAMA: He wants me to support him there or not.

CHAIRPERSON: Oh okay.

MR GAMA: If he felt that he could handle it he would

handle it.

CHAIRPERSON: Ja okay alright.

ADV MYBURGH SC: And if we carry on with your affidavit at 250.155 you say at the time of sending the sms I had already dealt with the matter as I had spoken to Callard telephonically during the evening of 23 January 2014.

MR GAMA: Yes.

ADV MYBURGH SC: And then you take issue with what Mr Callard says at 54.1 and that is ..

10 **MR GAMA:** On his 54.1?

ADV MYBURGH SC: Ja. Where he said that it is incorrect when you said I had just received your email he said that cannot be correct because you had – you had followed up on it. And you take issue with that.

MR GAMA: That is correct yes.

ADV MYBURGH SC: And then at paragraph 57 of your affidavit you say I note the professional opinion expressed I do not differ from it and have no cause not to support it.

MR GAMA: Yes.

20 **ADV MYBURGH SC:** And that is where he is talking about the concerns that he had.

MR GAMA: Yes.

ADV MYBURGH SC: Alright and then could I take you to other parts of your affidavit that are of some significance for present purposes. Could you please go to page 250.145.

Sorry my reference is wrong. I beg your pardon. 168. You dealing then generally at paragraph 77 at the foot of the page with the acquisition of the 120 E locomotive you say TFR had set out to procure 100 locomotives from the coal line from Mitsui in line with the 19E acquisition. The BADAC determined that we had utilised confinement as a procurement strategy with Mitsui on two previous occasions and that this did not permit a third acquisition from Mitsui. The GCEO and GCFO subsequently requested a

10 confinement to CSR and the BADAC agreed to the request. A decision was taken whilst I was protesting the appropriateness of the request having regard to the fact that CSR had no established history with the provision of similar locomotives in South Africa. Subsequent to the approval of the aforesaid request by the BADAC which motivated its decision to the board Transnet's technical design team engaged with CSR to create prototypes where after the locomotives were delivered and employed on the coal line. They were named 21E Series. You want to

20 comment and expand on that?

MR GAMA: Yes I think I am – after the – after the – that meeting of the 24th we were then informed that we – we should engage with CSR which we did and they then created the prototypes. Those 100 locomotives were manufactured and in fact with the benefit of hindsight and

sometimes ignorance can be interesting because the people that signed the CSR memo were saying look they did not know anything about locomotives and this CSR locomotives they are better than the Mitsui locomotives. And I think they have – they have fared well. The Mitsui locomotives gave us a lot of post commissioning teething problems in the coal line. There were lots of issues around their adherence and all of those kinds of issues which cost a lot of money in the sense that they had to be taken out for frequent repairs and when the CSR locomotives came in they did assist in terms of delivery record volumes on the coal line and in fact the customers were very happy because for the first time after we took delivery of this Transnet reached about 77 million tons of coal in one year and it is something that we had never thought would ever happen. And that was as a result of these CSR locomotives that came through – these new ones the 21 E Series.

ADV MYBURGH SC: I want to take you to parts of Mr Singh's affidavit if I may and this you find and someone will help you with this Transnet Bundle 5(c) Exhibit BB23.

MR GAMA: Ja.

ADV MYBURGH SC: Could I ask you to turn to page 1458.

CHAIRPERSON: So that is 1558?

ADV MYBURGH SC: 1458 Chairperson.

CHAIRPERSON: 1458.

MR GAMA: Oh it is in the second bundle. This one goes to
– oh ja 14?

ADV MYBURGH SC: 1458.

MR GAMA: The black numbers?

ADV MYBURGH SC: Yes on the left hand side.

MR GAMA: This one goes to 1425. 1458.

CHAIRPERSON: Ja.

MR GAMA: Yes.

ADV MYBURGH SC: I just wanted to ask you to have a
10 look at paragraph 119 he is commenting on a paragraph in
the Fundudzi Report. Perhaps it is not – he says I deny the
contents of this paragraph in that – insofar as it relates to
the manner in which the confinement was prepared for
these reasons.

He says Mr Gama was the Chief Executive of TRF.

MR GAMA: TFR.

ADV MYBURGH SC: Was for all intents and purposes the
end user of the locomotives as he was ultimately
accountable for TFR as a division of Transnet.

20 Sub 2 he was present at the meeting at which the
confinement was present – I presume – presented and
approved by the BADAC. Do you want to say anything
about that?

MR GAMA: Ja I was partially present. I cannot recall you
will see that that meeting dealt with a number of issues. It

was not only the 100 it also dealt with the one of 64. So I was partially present but I do not have a recollection of my presence when the 100 was discussed. But I would also say that even if I was present in those kinds of meetings that is where you go to these meetings and you speak when you are spoken to. (Speaking in the vernacular).

CHAIRPERSON: Well you will have to say that in English for the benefit of those who do not understand Isi-Zulu.

MR GAMA: I am saying Mr Myburgh that the – in these
10 kinds of meetings where you are invited you are – you are partial attendee and it says – you speak when you are spoken to. You are there to provide advise if it is required. You are not there to express any new views or anything that you might want to do because you know the man waiting outside.

CHAIRPERSON: You are not outside participant.

MR GAMA: You are not a participant at all the particular meeting.

ADV MYBURGH SC: Mr Gama perhaps just before nine
20 o'clock I found the reference that I missed just now. Could I ask you to go back to your affidavit or back to your exhibit 28 and to another of your affidavit – your second affidavit. Let me ask you to go to page 144 so this is in the beginning of Exhibit BB28.

MR GAMA: BB?

ADV MYBURGH SC: BB28 so it is your exhibit and to page 144. Bundle ...

MR GAMA: 250.144?

ADV MYBURGH SC: 144 no not 250.144 that is what – I had confused myself I am sorry. At the beginning 144. Just at paragraph 30 at 144 you also deal with 100 locomotives and what we find that 30.1 are things we have already dealt with. I just want to take you over the page 145 at paragraph 30.2.1 the written recommendation to procure
10 100 locomotives from CSR was signed by the CFO, the GCEO at the time etcetera in circumstances where I was of the view that CSR did not have the capability to manufacture heavy haul locomotives. You confirm that?

MR GAMA: I confirm that.

ADV MYBURGH SC: And then the next sub paragraph 30.2.2. I was informed by the GCEO that Sharma the Chair of the Disposal and Acquisition Committee ADC had not permitted any further procurement by way of confinement from Mitsui.

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

ADV MYBURGH SC: I deny that I was responsible for making a recommendation to the ADC and that I failed in my fiduciary duties during the acquisition of 100 locomotives from CSR as [?] you confirm that?

MR GAMA: I confirm that.

ADV MYBURGH SC: Could you just give us the context of this discussion that you had with Mr Molefe.

MR GAMA: I think I have already said it but I can repeat it. The context was that we had already confined twice to Mitsui and that the BADAC Chair and the BADAC have then said look there was not going to be a third opportunity for us to do that so they had then – and I think that is at the time when they actually withdrawn that submission that had been made in November. So that is the context.

10 **ADV MYBURGH SC:** And did Mr Molefe make specific reference to Mr Sharma the Chairperson?

MR GAMA: Ja when we had the discussion he said look the Chairperson of the BADAC but normally it is not really – you do not work like that it is really – it is the BADAC in its totality. You cannot hold one person if the others agreed it is the whole 00:22:16 we do not have a system of singling out particular people per se but ja that is what happened.

CHAIRPERSON: Yes but you say on this occasion even though that is not what it normally done namely singling
20 somebody out on this occasion Mr Molefe did or are you saying he...

MR GAMA: That is the information that I got and that was the information that I gleaned ja.

CHAIRPERSON: Ja. And what was your understanding of what he was saying with special reference to whether he

was saying that was the view that came from the Chairperson Mr Sharma or the committee as opposed to saying that was the view of the committee. Did you have an understanding?

MR GAMA: My understanding was that he – he had particularly been the one who was not very happy about it but the – the whole committee concurred with him.

CHAIRPERSON: Okay. Ja.

ADV MYBURGH SC: Chairperson if this is a convenient
10 time?

CHAIRPERSON: Yes, no that is fine. We will adjourn then. I think that therefore the arrangement about tomorrow is as we have discussed and I suggest that maybe Mr Myburgh you could be in touch with Mr (talking over one another).

ADV MYBURGH SC: Yes I will do that at lunch

CHAIRPERSON: With Mr Pretorius over the lunch break and then you can share the information. Ja.

ADV MYBURGH SC: Thank you Chairperson.

20 **CHAIRPERSON:** Okay alright. Thank you to everybody for your cooperation to enable us to sit until this time.

Thank you Mr Myburgh and your team and the investigation team.

Thank you Mr Gama and your legal team. Thank to the technicians and staff.

Thank you very much to everybody.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 12 MAY 2021

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