

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

BRAAMFONTEIN CHAMBERS

10

12 MARCH 2020

DAY 222

FINAL

20

PROCEEDINGS COMMENCE ON 12 MARCH 2020

ADV VAS SONI SC: To start with an apology. You raised questions yesterday Mr Chairperson about the bundles. We could only get to talk to the correct people this morning. They are working on them and they tell me they will need another half hour so I am going to please ask if we could start just after 10:30. The bundles will then be in the order that you have suggested and which obviously would allow us to proceed expeditiously.

CHAIRPERSON: Okay alright so it...(indistinct) do you mean 10:30 or
10 at 10:45?

ADV VAS SONI SC: Mr Chairperson may I suggest 10:45 but if it is earlier we will give you a shout.

CHAIRPERSON: (Indistinct).

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay alright. I see there are lights that have been put in but it will be certainly that one is too bright and I had hoped the technicians on their ...(indistinct).

ADV VAS SONI SC: I can say to you Mr Chairperson from here.

CHAIRPERSON: *Ja*.

20 **ADV VAS SONI SC:** That the lights here look okay but you look like something ...(indistinct).

CHAIRPERSON: Is that so – *ja*.

ADV VAS SONI SC: *Ja*. I do not know we will try and deal with that as well.

CHAIRPERSON: *Ja* I think that one at the top was not ...(indistinct)

but from what I am told it might be that it is – it only works under certain circumstances. It will still ...(indistinct) or something. It may be that they need to see whether they can position the back one where it is not going to be so bright.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I do not know exactly how they should it but they have it ...(indistinct). I do not know about this one to people that side whether it looks fine.

ADV VAS SONI SC: Yes it is ...(intervenes).

10 **CHAIRPERSON:** This one was not there yesterday.

ADV VAS SONI SC: It was not there yesterday.

CHAIRPERSON: *Ja* how is it – is it fine?

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: It is fine. So I think it is just that one. It may be that part of the ...(indistinct) that seems to be ...(intervenes).

ADV VAS SONI SC: That something done over there.

CHAIRPERSON: And maybe would ...(indistinct) but it is been directly it might be fine I am not sure.

ADV VAS SONI SC: Yes ...(indistinct) idea Mr Chairperson that they
20 will adjust – they have heard what you have said and they will adjust it accordingly.

CHAIRPERSON: Yes, yes. Okay no that is fine. So we will step down the matter until 10:45 unless you will let me earlier that we can pursue and under which pages you would like to ...(indistinct).

ADV VAS SONI SC: I am indebted to you Mr Chairperson.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

MEETING ADJOURNS

HEARING RESUMES

CHAIRPERSON: The ...(indistinct) Report is it not a separate exhibit on its own?

ADV VAS SONI SC: It is in fact a – it is in a separate – entirely separate file.

CHAIRPERSON: Ja it is a separate exhibit ja.

10 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: Okay. Okay.

ADV VAS SONI SC: And then there is Mr Molefe – Bundle D is Mr Molefe's affidavit together with the annexures.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: Bundle E is Ms Ngoye's – two of Ms Ngoye's affidavits with the annexures.

CHAIRPERSON: Annexures ja.

ADV VAS SONI SC: And then Bundle F are the affidavits together with the annexures of the rest of the witnesses namely Mr Achmat, Mr
20 Dingiswayo.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Ms Kweyama, Mr Holele, Mr Rakgoathe and Mr Muller.

CHAIRPERSON: Okay no that is fine. I think we just also need to emphasise that although on the spine of these files they will appear

Exhibit numbers – the Exhibit numbers do not refer to the file they refer to the documents inside the files.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: And we will refine that so that references that you look at will tell you exactly what is in that file.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: So whatever is there we will refine to some extent.

CHAIRPERSON: Okay thank you.

- 10 **ADV VAS SONI SC:** Chairperson before we continue I am told that that light has been adjusted.

CHAIRPERSON: I am just looking at the lighting. There is some improvement in terms of the lighting it is just that it is not enough and the – that light is not facing me the way it was before.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I wonder whether these ones work or whether they – when they are on they cause any problems because I see right at the back there with the lights on the ceiling it looks quite well. The lighting seems quite fine. Well those responsible do hear what I have to say.

- 20 Maybe they are not working but let us continue in the meantime.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I am sure at some stage we will have perfect lighting.

REGISTRAR: Yes. Mr Chairperson before we continue with the evidence of Mr Molefe, we are constraint to place a matter on record because it has emerged in the public space. Apparently Minister Fikile

Mbalula was on radio this morning complaining that he had not received the affidavits in which comments are made about the dismissal of Ms Kweyama's Board. Ms Chairperson I have been told and I have proof here that in respect of Ms Kweyama's affidavit that affidavit was in fact served on Mr Mbalula through the – an e-mail address which the Commission has used previously and about which there have been no complaints. The same applies to Mr Achmat's affidavits. And the same applies to Ms Ngoye's affidavit. So they were all served on him and I could just say Mr Chairperson that in addition to the normal address
 10 one of the investigators saw – looked if there was an additional address and after the affidavit of Ms Kweyama was served on him ... (intervenes).

CHAIRPERSON: Is it not Kweyama?

ADV VAS SONI SC: Kweyama yes.

CHAIRPERSON: Kweyama *ja* I think it is *ja*.

ADV VAS SONI SC: Yes. After that affidavit was served Mr Chairperson the further two affidavits namely that of Ms Ngoye and Mr Achmat were served on a second address as well. Now at the end of the day Mr Chairperson we do not want to be side tracked from the
 20 matter. There has been a communication between the Commission and the Ministries Office and all the affidavits were then – that we served on that address we forwarded to the Ministry and they appear to have confirmed that at least this morning they had received them.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: Mr Chairperson.

CHAIRPERSON: Yes you may proceed.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Mr Molefe the oath you took yesterday will continue to apply. You accept that?

MR MOLEFE: (Indistinct).

CHAIRPERSON: Thank you.

ADV VAS SONI SC: Mr Molefe ...(intervenes).

CHAIRPERSON: And I think you may keep your microphone on I have been told that that should be fine.

10 **ADV VAS SONI SC:** Mr Molefe yesterday we interrupted your evidence at the point where ...(intervenes).

CHAIRPERSON: I am sorry Mr Soni.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I just mention in case anybody who has something to say I propose that since we have had this delay we do not take any tea break we go straight up to lunch time. Mr Molefe would that fine with you?

MR MOLEFE: (Indistinct).

CHAIRPERSON: Okay thank you.

20 **ADV VAS SONI SC:** Thank you. Maybe I should have placed that on record. Sorry Mr Chairperson.

CHAIRPERSON: Yes, no, no that is fine.

ADV VAS SONI SC: Now the topic before which we stopped is in your affidavit dealt with as your early days at PRASA. You remember that?

MR MOLEFE: That is correct Chairperson.

ADV VAS SONI SC: Now would you tell the Chair very briefly what your experiences were about the time you were appointed as the Chair of the Board? If you could tell us when you were appointed and so on?

MR MOLEFE: Chairperson I was appointed on the 1st of August 2014. Other Directors were also appointed at the same time. I must hasten to say that I was not involved in their nomination per se. Now once we had been confirmed as a Board of Directors the first thing I did was to meet with the Group CEO of PRASA, Mr Lucky Montana, who generously congratulated me on my appointment. He told me a bit
10 about what a great leader I was. He followed my struggle, track record and he mentioned more specifically the Delmas Treason Trial which involved the leaders of the United Democratic Front. A front organisation for which I was the General Secretary at the time of the trial. And it was held at Delmas. It came to be known as the Delmas Treason Trial and I think it was Delmas 1.

ADV VAS SONI SC: Sorry Mr Molefe. Just for the record you were one of the accused in the trial?

MR MOLEFE: I was one the accused in the trial. It was not an easy trial. I had to give evidence for four weeks – in the witness stand for
20 four weeks.

CHAIRPERSON: Yes and that was during apartheid?

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: Just so that whoever may read this transcript your evidence 10 years – 20 years from now they should not think it was under democracy.

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: *Ja.*

MR MOLEFE: In fact the fundamental demand of the United Democratic Front was that we needed an inclusive and democratic constitution which provided for Universal Suffrage. A right that excluded by the Constitution under the apartheid Government. So in response to Mr Montana's generous congratulations and at the same time of course as he was congratulating me he informed me that he had been in PRASA for a long time. He had previously advised the previous
10 Chairperson of PRASA and the Board that he intended not to renew his contract when it ended.

ADV VAS SONI SC: Sorry can I just – this is just for record I am not wanting to interrupt you. When you say the previous Chairperson of the Board who was that?

MR MOLEFE: The previous Chairperson of the Board at that point had been Mr Sifiso Buthelezi. I think he is currently one of the Ministers in the current Government – Deputy Ministers in the current Government.

CHAIRPERSON: Yes you were saying in response *ja*. You were saying in response to this.

20 **MR MOLEFE:** My end response to what Mr Montana said to me, I said well you know we come in at a time when PRASA is undertaking a major – carrying out a major program of mobilisation and therefore the new Board would need you to stay on and provide leadership to the Management Team as we proceed to execute this important program. And we got in there saying what we said understanding that in the first

instance our commitment as the Directors was to support the Executive Management Team who were essentially the operational people in the business.

ADV VAS SONI SC: And just in brief Mr Molefe what did that modernisation program involve, what period would it take and what was the amount that would be eventually spent?

MR MOLEFE: The modernisation program Chairperson was a program intended to revitalise the rail system in South Africa which had suffered a neglect of over 40 years where there was no capitalisation both in
10 terms its infrastructure as well as the locomotives and the coaches for trains. For a long time PRASA was relying on attempts to fix the – particularly the Metrorail which was failing all the time. Another element of modernisation included the installation and rollout of signalling systems. And in this regard there were essentially three major contracts. One rolled out in KwaZulu-Natal led by a Canadian company called Bombardier Transport. In the Western Cape it was Talis Africa with a black partner there and then here in the Gauteng Province it was Seamans where the main nerve centre for Command and Control was established in – I think in Kalkfontein. So that was the
20 modernisation program but it would have also entailed manufacturing of new locomotives, the trains, new trains, state of the art trains. 20 of each were initially to be procured from Brazil and here in South Africa in order to ensure that this procurement leads to creation of jobs and it stimulates growth in the economy a factory was to be built in a place called Dunnottar in Nigel. Various railway stations were to be

renovated. A lot of expenditure to go in it and because new trains were going to be procured it was critical that they should be depots that were modernised and the key ones I think there was one in Braamfontein around the corner here. One was Wolmerton and then there would be one in the Western Cape. All of those involved a lot of investment. Overall the program of modernisation was estimated to cost R172 billion over 40 years. So it is this kind of a program that PRASA had to implement and the Board of Control of PRASA had to exercise oversight over it.

10 **ADV VAS SONI SC:** So in Mr Molefe before you on.

CHAIRPERSON: I am sorry Mr Soni. You might have to raise your voice. I am just wanting to make sure everybody can hear everybody. *Ja*. Okay.

ADV VAS SONI SC: These were quite ambitious programs and so on. Who had devised those programs? Was it your Board or was it your Board that was going to – had inherited these programs if I can call it that?

MR MOLEFE: Chairperson indeed these were ambitious and exciting a program this is precisely for that reason that we found being on the
20 Board of PRASA at that historic moment to have been very attractive. Now who designed them? This was a decision taken by the Cabinet of the Republic of South Africa and I must say that Chairperson it was not only about PRASA it included also Transnet which became a separate logistics business after the unbundling of the previous structure of the Government. So it was a Government program.

ADV VAS SONI SC: Now you mentioned a number of programs. At the time the Board took over of assumed office what was the state of the contracts in relation to this modern – the first phase of the modernisation program?

MR MOLEFE: Most if not all Chairperson the contracts had already been concluded – signed with various original equipment manufacturers as well as other service providers. I have indicated those that were rolling out signalling systems. The – those contracts had already been concluded and to be more specific with regard to the locomotives a
10 contract had been concluded with a company called Swifambo which was a South African company which later was to partner with Vossloh. I say later advisedly because at the time when this contract was awarded Swifambo which had no experience in rail either leasing or operation did not have a sub-contract with Vossloh which had the capacity to manufacture the locomotives.

ADV VAS SONI SC: Yes. And as far as the Board was concerned what steps did it take in relation to those contracts?

MR MOLEFE: As a new Board Chairperson in order for us to exercise a proper oversight we felt duty bound to ask for detailed presentation on
20 the contract by the Group CEO and his Executive Team but we also then requested the actual contract so that we could see precisely what the company was committing itself to. What obligations we had in respect of those contracts.

ADV VAS SONI SC: Yes. Now ...(intervenes).

CHAIRPERSON: Do – I am sorry. Are you able to give an indication as

to how much in terms of that R170 something billion over 40 years that was estimated to be required for the whole modernisation program? Are you able to indicate about how much – what percentage of that maybe was anticipated to be used in the next 10 years or so from the time that the program started or from the time when your Board came in? Was – are you able to give an indication whether it was 10% of that 5% of that over the next X number of years?

MR MOLEFE: Chairperson I might not specifically be able to say 10% but I know that over the – I think the first 10 years or so.

10 **CHAIRPERSON:** *Ja.*

MR MOLEFE: The amount of money to be spent was R51 billion.

CHAIRPERSON: Okay. Okay. No that is helpful. Thank you.

ADV VAS SONI SC: Now you say that the contracts had already been concluded and you asked the then CEO to explain matters to you and make detailed presentations. Were those made?

MR MOLEFE: The presentations were made in respect of the briefings that the Board had requested. But to the extent that the Board of Control required the actual contracts in terms of which these locomotives particularly and the trains that were going to be built called
20 the Gibela Consortium led by a company called Alstom those were not given to the Board. The Board had to, in fact I led that, go to the companies at the time we had been advised were the ones who advised PRASA on the contract. They drafted the contracts and advised them on the signing thereof. My recollection is that the company in question at the time was Webber Wentzel.

ADV VAS SONI SC: That is the legal firm you mean?

MR MOLEFE: The legal firm that was – external legal firm advising PRASA.

CHAIRPERSON: Well I am sorry.

ADV VAS SONI SC: I am sorry.

CHAIRPERSON: You say the contracts were not provided to the Board. I assume by the Group CEO?

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: But did he give a reason – did he refuse or did he just
10 not provide without refusing and if so did the Board not say, hey we asked for the contracts what is happening? Where are the contracts?

MR MOLEFE: Meeting after meeting Chairperson the GCEO, Group CEO, was reminded that the Board needed those contracts. They were not forthcoming.

CHAIRPERSON: But he was also not flatly refusing but he was just not providing them?

MR MOLEFE: No he does not say no.

CHAIRPERSON: Ja.

MR MOLEFE: But he does not provide.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: But I must also say that of course during that period now we were moving towards the time when he – we were beginning to deal with issues pertaining to the Public Protector and the fact that he was saying now he is not going to renew his contract.

CHAIRPERSON: Yes.

MR MOLEFE: So, *ja*.

CHAIRPERSON: Yes are you able to indicate what you think the reason was why despite the Board requesting that these contracts be provided to them and requesting repeatedly, they were not being provided or is there something that you haven't – you're not able to say. It's just strange that Group CEO who's answerable to the Board is asked to provide very important documents and over some time they are not provided?

MR MOLEFE: I would be speculating if I were to talk about what the
10 reasons were.

CHAIRPERSON: Yes.

MR MOLEFE: All I can say is that ...(intervenes).

CHAIRPERSON: They were not provided.

MR MOLEFE: They were not provided and when we initiated engagements with the firm of lawyers that did the contracts ...(intervenes).

CHAIRPERSON: Yes.

MR MOLEFE: We spent time with them presenting to us, the Group CEO was very angry that we went directly to those lawyers to ask for
20 those contracts because we didn't stop there, we even said, well we will also ask the CEO of the company that is manufacturing the trains to also come and present to us, that time it was a man called Mr Granger – Mark Granger.

CHAIRPERSON: Yes.

MR MOLEFE: I don't know why he was unhappy with what the Board

wanted, that was the position.

CHAIRPERSON: Ja, and the Board only went to other sources, other parties, when the Group CEO was – they had failed, over some time, to furnish the contracts to the Board.

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: Yes, okay thank you.

ADV VAS SONI SC: Just to check up something that the Chairperson has raised, you understand what prompts that series of questions. You are the Board, the CEO reports to you, you come in with these multi
10 billion Rand contracts on the table as it were, you ask for the contracts and you're not provided with them and you understand the cloud that hangs over that issue?

MR MOLEFE: Well I do understand the cloud that hangs over the issue Chairperson but I would imagine that at the appropriate time in the course of this evidence we will deal with that but what was strange, Chairperson, was that with this particular State Owned Company the Board of Directors didn't seem to immediately, at that stage, to have the kind of relationship where the Group CEO understands that when the Board requires something, which you know you have or you know
20 where to find, you go get it and give it to the Board as per it's request. I think it's an issue about, what was their understanding of the power relations between the Group CEO and the Board, was it a situation of dual power or was the CEO understanding that he reports to the Board. So these are issues that are ...(indistinct) when you compare with the private companies or public companies with their Board of Directors.

CHAIRPERSON: Well of course we'll continue with your evidence, that maybe by the end of your evidence more light or perspectives will emerge. It's just that it seems strange to me because my expectation and maybe the expectation of many people would be that when there is a new Board, whether it's a private sector or parastatal the current Group CEO would actually offer to the Board – Chairperson say, I and my team will be ready as soon as you are ready for us to present to you and give you a full picture of what is happening at the moment in the company and then the Chairperson would in due course say, let's say

10 the date, come and brief us fully. So obviously the Board would want to know what commitments, important commitments does the company have and if you have a program such as the modernisation program obviously, the Board would want to know, would want to see the contracts and have a full picture. So that's my expectation and that's why, maybe I asked you the question that I asked you in regard to a situation where the Group CEO knows you are new as a Board in this entity and you specifically ask for documents and they are not provided until you have to go outside of the company. So I thought I'd just mention that context.

20 **MR MOLEFE:** Chairperson in the normal course of events in a normal company that's what happens but I want to separate what we would call the induction of the Board from the contracts that we are talking about.

CHAIRPERSON: Yes, yes.

MR MOLEFE: The process of induction did take place.

CHAIRPERSON: Yes, yes.

MR MOLEFE: And the Group CEO Mr Montana, together with his Executive Team led that process.

CHAIRPERSON: Yes, yes.

MR MOLEFE: Where we could not understand failures on his part was, when we wanted now to see the actual contracts because as a Board of Directors it is well and good to say, yes Management have given presentations they've told us what the program of modernisation entails and what is its status, what are the critical elements thereof but you still want to know, what do the contracts commit us to as a Board of
10 Directors.

CHAIRPERSON: Yes, no definitely, particularly when you're talking about big amounts as the Board you should want to see that, thank you Mr Soni?

ADV VAS SONI SC: As you please Mr Chairperson, and especially given the fact that in terms of the PFMA the Board is the accounting authority.

MR MOLEFE: That is correct Chairperson, the Board is the accounting authority, we can't say to the Executive Authority, that is the shareholder and to the legislature to which we have to account that, no
20 we can't account because Management did not give us a report, didn't give us a contract. We are obliged in terms of the Public Finance Management Act to exercise fiduciary duty to exercise the duty of care and diligence as we deal with these matters.

ADV VAS SONI SC: Now a point you made in relation to the power relations and so in, it appears to have been quite a fluid situation

because you then talk about a challenge that faced the Board in regard to the audit report. Can you tell the Chairperson about that?

MR MOLEFE: Chairperson by September 2014 which is a time at which the final audit and annual report should have been concluded and actually tabled in Parliament by the Minister subsequent to which the Board would be required to appear before Parliament to answer questions. PRASA at that time was not ready there were many queries from the Auditor General regarding that, and I recall pretty well that by September 2014, which is really just a month after I had been
10 appointed Chairman of the Board, I was invited by the Group Chief Executive to attend to events in Europe. The first one was Mufex which was a conference of Rail Organisations and that one was held in Madrid and the second one was the biannual global and the biggest exhibition rail or exhibition being organised and hosted by Deutsche Bahn which is a German Rail Organisation. So I was invited to that, the GCE and I – Group Chief Executive Officer and I had to return hurriedly because the annual financials had not been concluded and we had to go back quickly to engage the Auditor General's Team Management to try and get the finances in order.

20 **CHAIRPERSON:** So you had – both of you had already left and you had to come back?

MR MOLEFE: *Ja* but to clarify matters, Chairperson, the Group CEO would have known that the financials had not been conclude, it's not like we only discovered when we were out of the country. We were saying we can't stay longer because we've got to go back and get our

house in order.

CHAIRPERSON: Yes, yes okay alright. Before you proceed, I just want us to conclude the issue of you or your Board trying to get the contracts. You spoke to Webber Wentzel they did a presentation and I think you said somebody else did a presentation. Ultimately were you able to have copies of all the contracts that you wanted?

MR MOLEFE: We never got the contracts to be given to us but it was through our consent. They said they'd given PRASA the contract but what they had was their own copy and we were satisfied, having spent
10 like half a day with them discussing those contracts and getting them to present to us that we had the assurance that this big firm of lawyers had done the correct done, they have done the best they could to protect the interest of PRASA. Actually the person who was leading these negotiations and the drafting of the contract was an experienced former – experienced lawyer who had worked in rail in the UK and other parts of the world, he understood the complexities of these contracts.

CHAIRPERSON: So – but are you saying that they did a presentation but didn't give you, as the Board, copies of the contracts?

MR MOLEFE: We didn't take copies of the contract, we accepted that
20 if we want them we can go and get them at the firm of attorneys.

CHAIRPERSON: Yes, okay but did you get to know, like how many contracts had been concluded with whom they had been concluded and what the value of each one was, all of that, maybe through the presentation?

MR MOLEFE: In respect of this contract I think our main focus was on

the – and I must come back to this point, was on the R51 billion which was being allocated for the manufacturing of the new trains. I should have indicated that the procurement of the locomotives was outside the R51 billion, that one was in the region of R3.4 billion.

CHAIRPERSON: Yes, yes, okay so would it then be correct for me to conclude from your evidence that after Webber Wentzel had made their presentation you were satisfied that they had their presentations had included telling you all the contracts that they were telling you about all the contracts that they were aware of relating to PRASA in which they
10 had been – which they had drafted but you are not sure as to how many contracts there had been – that had been concluded that fell under the modernisation program already and I accept that you might not be wanting to see every small contract you would be interested in big ones, but would it be fair to make that conclusion or not really?

MR MOLEFE: It would be fair to say, Chairperson, that we did not know about the rest of the contract, and I must hasten to say, whereas Webber Wentzel advised PRASA on the Gibela program, the manufacturing of the trains, they did not seem to be involved in any other contract. The rest of the contracts were done by different law
20 firms, small ones and so on.

CHAIRPERSON: Okay, so the one on which they had been involved was the Gibela – that's the R51 billion one?

MR MOLEFE: That is the R51 billion one.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: May I just ask to conclude in relation to the

presentation by Webber Wentzel, was the CEO, Mr Montana present at that presentation?

MR MOLEFE: No he was not. He was not because at that stage it was already clear to us that he was not keen to share with the Board all information that the Board required and if I remember well at that time he was not even at the office of the company when the Board wanted that presentation.

CHAIRPERSON: So would it be correct to then say that, as far as you are concerned by the time of the presentation that was made by
10 Webber Wentzel to your Board it was clear to you that Mr Montana's failure to provide the Board with contracts was based on his unpreparedness to provide the Board it was not anything else, he was simply not prepared to provide them or is that being unfair to him?

MR MOLEFE: There could be two reasons that – but he didn't even need to be – or unpreparedness means unwilling ...(intervenes).

CHAIRPERSON: Unpreparedness means unwilling yes.

MR MOLEFE: *Ja* it could be that he was unwilling and secondly it could be that he felt but you are the Board of Directors why – this is an operational matter why do you interfere and that, probably, would
20 explain why he made a big issue of the fact that the Board went and met with the firm of attorneys that was advising PRASA. Ordinarily he would have said, okay you've seen them well we hope that now you understand the program better than before but that was not the attitude of the Group CEO.

CHAIRPERSON: Well it seems to me that – you said it could be one of

two reasons, it seems to me that in either case it's unwillingness to say this, he is not prepared – was not prepared, at least that's how you saw it, that's what I want to confirm that, that's how you saw it that he was unprepared to give these contracts or share some other information with the Board that the Board wanted and when you look at why he might not have wanted to share the information, then it may be that he thought it's operational and the Board should have nothing to do with it. Would that be a fair summary of what you thought by the time of the presentation?

- 10 **MR MOLEFE:** That is correct Chairperson, I may also want to locate it within the context of other developments at that time.

CHAIRPERSON: Yes.

- MR MOLEFE:** I think we would probably return to this matter in the evidence, two things had happened. It was a disagreement we had, had with the Group CEO regarding the contracts that they had awarded in respect of the Braamfontein Depot modernisation, the rail and turnouts procurement, it is also part of the evidence later on. The second one was the fact that we raised each issue with having to hear from the media that PRASA had been given an interim report which
- 20 included a number of questions that the company had to respond to and it came from the Public Protector which the Board was not presented with and this now, the situation around much when we still asking for that report and it is at that time after these two events happened, 27 November 2014 and this matter of the Public Protector's interim report which I had discussed with the Group CEO that at that point in time he

says, I'm not renewing my contract but I'm happy to serve six months whilst you are searching for a new Group CEO but the attitude that time also changes as we will show in the evidence that increasingly the Board was getting an indication that the GCE for that period – the GCEO for that period, Group Chief Executive Officer for that period, Mr Montana did not consider himself fully accountable to the Board. He actually was beginning to question the integrity and the validity of the appointment of the Board and one of the key issues he raised in his many complaints was that he was not consulted when the new Board
10 was appointed.

CHAIRPERSON: Well I just want to make sure, with regard to the two developments that you have talked about, I just want to make sure that you – that they happened before the Webber Wentzel presentation because my question was more on the question on what you understood or thought to be the position as far as the Group CEO was concerned at that time. Did the two events or development happen before the Webber Wentzel presentation or after?

MR MOLEFE: Well certainly the first event of November but I do believe that the second one also happened before the Webber Wentzel
20 engagement because it took time, for us waiting for the contract.

CHAIRPERSON: Okay thank you.

MR MOLEFE: Ja.

ADV VAS SONI SC: Now in your affidavit you say, Mr Molefe, that there were two worrying aspects in regard to the audit state of PRASA and you refer to two separate amounts and you annex the audit report,

do you want to deal with that quickly?

MR MOLEFE: Chairperson the audit report of the year 2014/2015 by the Auditor General recorded that there was an irregular expenditure of over R500 million which in precise terms I think it was R550 million and queries arising out of the report projected also that the following financial year the irregular expenditure would be in the region of R8 billion. The response of the Board was to direct the Audit and Risk Committee to have a special workshop that was going to interrogate what went wrong to assess what could be done to fix these wrongs.

- 10 The conclusions of the Audit and Risk Committee was that literally all the Departments of PRASA, especially the finance function were dysfunctional and that the people in those positions just did not have requisite skills and therefore they were unable to discharge their responsibilities as they were required but also the Audit and Risk Committee didn't only talk about dysfunctional, it emphasised the fact that there were no controls as well within the organisation. Fundamentally what it meant was that they were saying that this organisation was broken, a lot of work has to be done to fix it.

- CHAIRPERSON:** This was now the risk – the Audit and Risk
20 Committee of your Board.

MR MOLEFE: That is correct.

CHAIRPERSON: And there would have been an Audit and Risk Committee under the previous Board, did you get to understand from the report of the Audit and Risk Committee under your Board that this finding they were making, namely that there were no controls reflected

that there had been no controls for quite some time or that there was – this was a new thing? I'm trying to see whether somebody hadn't done their job for some time and that's why there were these challenges or whether it was something new.

MR MOLEFE: I at this stage would not be privy to what the previous Audit and Risk Committee, the one before my Board had found.

CHAIRPERSON: Yes.

MR MOLEFE: But I am aware, it's something I want to steer clear of that in the course of the investigations conducted on the ...(indistinct)
10 within PRASA it was clear that some Members of the Board had raided red flags about certain contracts, and one of those was this one of the locomotives even before we came in, *ja*.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: Just, Mr Molefe, just to attempt to tie in the annexures with the evidence you've led, you refer, in regard to those two amounts you referred to, the R500 million in paragraph 16 and then R8 billion, can I just ask you to look at PM2 so that the Chairperson, when he's looking at the report would know, precisely where to look at and ask you ...(intervenes).

20 **CHAIRPERSON:** And PM2 would be at page 34 if you look at the red page numbers at the top right, is that correct?

ADV VAS SONI SC: As you please Chairperson PM2.

CHAIRPERSON: You might recall from your previous engagements that we do not mention the zero before the number.

MR MOLEFE: But P but where do I see the P? Oh, okay thanks.

Thank you.

ADV VAS SONI SC: May I ask you to turn to page 38? The 38 being the number on the top.

CHAIRPERSON: So, you disregard the zero.

MR MOLEFE: I am on page 38.

ADV VAS SONI SC: 38. Yes.

CHAIRPERSON: Oh okay, alright.

MR MOLEFE: Yes, I have found it on PM2.

ADV VAS SONI SC: Yes. So, if you look at paragraph 10 if you could
10 just read that into the record, please?

CHAIRPERSON: Maybe Mr Soni you can just repeat what this document is first so you can ask the witness to identify the document before he reads from it.

ADV VAS SONI SC: Oh, yes. Yes. First of all, Mr Molefe will you please tell the Chairperson what this document is. PM2?

MR MOLEFE: Chairperson PM2 is the Auditors General Report.

CHAIRPERSON: That would have been for which financial year?

MR MOLEFE: For 2014/2015 financial year.

CHAIRPERSON: Okay, thank you. And then you can read paragraph
20 10 at page 38.

MR MOLEFE: The relevant paragraph and I quote Chairperson reads as follows and that is paragraph 10 says:

“As disclosed in the note (xx) to the financial statements the capital commitment for the purchase of Rolling Stock Fleet Renewal program is 59.6 billion which was disclosed under events after reporting date in

2013/2014 Annual Report as 51 billion Rand.”

ADV VAS SONI SC: So, what is the significance of that in relation to the two figures you have mentioned in paragraph 16 of your affidavit? Remember you say it was projected to be 8 billion Rand more the following year?

MR MOLEFE: Well what I am saying Chairperson, is that if you were, add for example 8 billion Rand to what was reported as 51 billion Rand it will take you to 59 billion, of course it has some six hundred on the side.

10 **CHAIRPERSON:** Yes.

MR MOLEFE: So, it is this particular aspect that reflect that that amount is not being properly accounted for.

CHAIRPERSON: Yes. Is there a suggestion here as you understand this paragraph of any – of some misrepresentation that may have been made or not really? That is – let us how you understand that paragraph?

MR MOLEFE: One can summarize that but what is quite clear Chairperson is that there is a disjuncture between what is set out as a what the renewal program of the Rolling Stock would cost to purchase
20 that and what then is disclosed to the Auditor General. So, there has not been a full disclosure to the Auditor General that is what it means.

CHAIRPERSON: Yes, yes, yes. Then whether or not that was intentional, deliberate or not that might be another matter.

MR MOLEFE: It is another matter.

CHAIRPERSON: Ja, but what was disclosed was not the correct

figure?

MR MOLEFE: That is correct, Chairperson.

CHAIRPERSON: *Ja*, okay.

ADV VAS SONI SC: And the difference between what was disclosed and what the real figure was, was 8 billion Rand.

MR MOLEFE: That is correct, Chairperson.

ADV VAS SONI SC: Then, can I ask you at the bottom of that page if you could look at paragraph 14 please Mr Molefe and read what is the heading to that paragraph?

10 **MR MOLEFE:** The heading to that paragraph Chairperson is:
“Irregular Expenditure.”

And it is paragraph 14 and again if I quote it says:

“As disclosed in the note (xx) to the financial statements the agency incurred irregular expenditure to the amount of 550 million Rand”.

Which is what I have referred to earlier on Chairperson.

“Evidence provided confirmed noncompliance with Section 51(1) paragraph A item 3 and Section 51(1) paragraph B item 2 of the PFMA and the Agency Supply Chain Management Policy.”

So, there is no compliance with the PFMA, there is no compliance with
20 our own Supply Chain Policy.

ADV VAS SONI SC: And for just the record when a reference is made to Agency what is the entity?

MR MOLEFE: The Agency, Chairperson refers to the Passenger Rail Agency known by the acronym PRASA.

ADV VAS SONI SC: Right. Then you say in addition to this issue of

the audit, concerns being raised about the Audit Report by the Auditor General or in his Audit Report. You say there were other issues that the Board was concerned about, what were those? You refer to them in paragraph 17.

MR MOLEFE: The – at the time when the Board took office Chairperson we found that a whole lot of people had either been suspended or dismissed and the disciplinary procedure of the company was not followed. It was one of the major problems we had. And in fact 500 employees of a trade union that broke away from the South
10 African Trade workers trade SATAWU South African Trade Union
...(intervenes).

CHAIRPERSON: Transport and Allied.

MR MOLEFE: Transport and Allied Workers Union.

CHAIRPERSON: And you said workers or Members of a Trade Union?

MR MOLEFE: NTM which is a National Transport Movement. 500 of them had been dismissed.

CHAIRPERSON: Part of that Union.

MR MOLEFE: Of that Union. The Labour Court held that their dismissal was irregular and unlawful and that they needed to be
20 reinstated. Now this occasioned an enormous problem for the company because suddenly the company had to find money to pay these people who have not been at work for a long time. They were not receiving their salaries and the reinstatement meant that the situation had to return until – return to what it was before they were suspended.

CHAIRPERSON: Yes.

MR MOLEFE: So it was a big problem for the company, and of course regardless of whether at the time it was the Group CEO who made the decision, but he was the ultimate person responsible as the Chief of the Administrative function of the company.

CHAIRPERSON: Do you have – these might be details that you might not remember, do you remember what kind of figures the backpay for the 500 workers, more or less was that the company had to find?

MR MOLEFE: Chairperson, I would not remember the actual figures ... (intervenes).

10 **CHAIRPERSON:** But it was a huge amount as far as you recall.

MR MOLEFE: I may just say that when these things were happening – when the reinstatement was happening it was close to when the term of Office of my Board was going to end.

CHAIRPERSON: Oh, was going to end. Yes.

MR MOLEFE: We were not able to go into these details.

CHAIRPERSON: Yes.

MR MOLEFE: What I remember is that I met with the Leaders of the National Transport Movement to say – and I must say that we think that we were estimating that it will cost us over in the region of 500 million
20 to reinstate that, but it is an estimation.

CHAIRPERSON: Ja, that was an estimation.

MR MOLEFE: But I met with the Leaders of the Union to say; hey guys you understand that the company is in trouble and we have to respect the Court judgment, but can't we as people collectively committed to making sure that the company succeed. Agree on negotiating the

amounts that the company can afford maybe over an extended period of time.

And they were willing to do so, but of course I am not an operational person and again our Human Resources function in the company was very poor, was weak. I never got to know whether that negotiation was pursued and concluded. But of course if it becomes necessary I am sure those leaders I spoke to are there.

CHAIRPERSON: Yes.

MR MOLEFE: And should the Commission require to ask them to
10 confirm what I am saying I am sure they will be willing to do so.

CHAIRPERSON: Yes, and I am sure that the judgment of the court is also available somewhere. *Ja*, okay.

ADV VAS SONI SC: Now Mr Molefe earlier you recall. You were saying to the Chairperson that there is difference between the induction of the Board and then the substantive meetings that the Board had. I would like you to look at paragraph 18 and you say there that the first substantive meeting of the Board was in November, could you explain to the Chairperson how that came about. And what happened at the meeting?

20 **CHAIRPERSON:** I am very sorry to both of you before that question I wanted to ask something else arising from the previous question. You said that I think when your Board came in you found that there were a number of employees who had been suspended or dismissed and so on, are you able to give me an idea that maybe although you might not be a 100% what the numbers were that you were talking about, apart from

that group of 500 or is that difficult because it has been quite some time?

MR MOLEFE: My number would not be precise, but I know that there was an Executive called Cromet Molepo who also had an extended ...(intervenes).

CHAIRPERSON: Suspension.

MR MOLEFE: Suspension and legal ...(intervenes).

CHAIRPERSON: Challenge.

MR MOLEFE: Challenge, the others had simply been moved from
10 where they were to other positions there was – and some of them were forced to resign. I can't give the exact number but I mean if I want to do that we would have to go back to and find – try to find something from the records of the company which I do not have access to.

CHAIRPERSON: Yes, yes. *Ja.* No, no that is fine. I just want to have an idea whether it was something substantial but I guess it was something enough to cause the Board concern, as to what the numbers are but whatever it was but it was enough to cause you to be concerned.

MR MOLEFE: Well by the way Chairperson, from our point of view it is
20 not so much the numbers ...(intervenes).

CHAIRPERSON: Yes.

MR MOLEFE: It is the question whether there has been fairness and compliance with the procedures of the company on how you terminate the employment of your employees.

CHAIRPERSON: Yes.

MR MOLEFE: And whether the basis for suspending or removing them was in our view valid, justified. That kind of action and we concluded that in many respects. It did not.

CHAIRPERSON: Okay, no that is fine. The angle from which I was looking at it was as the Board you might not necessarily want to get involved if there might be one isolated incident but if there seems to be a number of instances where people are being suspended and dismissed in circumstances that are questionable as the Board you might say no, let us try and find out what is happening, as opposed to
10 what might be an isolated case. But I understand what you mean, but I just thought that I must keep you in the picture.

MR MOLEFE: Chairperson I must state that there were many.

CHAIRPERSON: There were many.

MR MOLEFE: There were many.

CHAIRPERSON: Okay.

MR MOLEFE: And I suppose when we go down, deal at some point with the Public Protector's Report this matter is raised there again by the Public Protector.

CHAIRPERSON: Yes, yes. You can elaborate. *Ja*. Okay, no that is
20 fine.

ADV VAS SONI SC: Mr Molefe the first substantive meeting of the Board you say was held in November 2014; you tell us what – tell the Chairperson what happened at that meeting?

MR MOLEFE: I call it the first substantive meeting Chairperson because that was the first scheduled meeting of the Board that is

outside the induction that had already taken place. That meeting we were required to hold, because the – amongst others there would have been other items, but amongst others the Finance Capital Investment and Procurement Committee of the Board which is called the FCIP and in line with the urgency of accelerating the program of modernization and preparing for a stage in yards for the trains that were being manufactured in Brazil and which were likely to come.

We had to make urgent decisions in that regard. Management had awarded – well had announced their preferred bidders in respect
 10 of, in particular Braamfontein Depot and the matter that pertained to rails and turnouts.

Because we are a new Board, because we also needed to have been seen to have applied our minds on these matters. We looked at the amounts it was in the region of 4 billion and we said look we appreciate the urgency of the matter which was of course presented by the former Chairperson of the Board Mr Sifiso Buthelezi who had now become the Chairperson of the FCIP.

We said give us an assurance that proper process was followed before you awarded to your preferred bidder. Give us the
 20 Probity Report. The Probity Report was not in the pack of the Board. The Group CEO, Mr Montana, said well you know that Probity Report is there, I cannot understand why it is not in the pack but you will get it, we will give it you as soon as possible.

On the strength of the promise that Mr Montana made to the Board which was not refuted by the Chairperson of the FCIP, we agreed

to adopt – to approve the recommendation but we said it is subject to that Probity Report being delivered to the Chairperson of the Board and the Chairperson of the Risk Committee.

Them having acquainted themselves to that report will then advise the rest of the Directors that we can now go ahead and implement. At that point we said to Management; nobody should go and tell what we – who we are saying are the preferred bidders that they have got this contract because we must first jump this hurdle.

So, w

10 e waited Chairperson for that report it was not forthcoming. Of course around that time Mr Montana had advised me that he felt like he was burned out, he had been working very hard, could he please take a break which I encouraged because I could see he had been running around the country and so on.

Then, one of the Executives, Miss Martha Ngoye, was appointed to act as the Group CEO in the absence of Mr Montana. Because we did not get the report I had to call Directors who were on holiday to a meeting of the Board of Control understanding the urgency of this project of depot modernization rails and turnouts which are
20 necessary for the maintenance of the rail tracks and so on.

We called the meeting on the 23rd December that was just two days before Christmas and I must applaud the loyalty of the Directors at the time because they were all willing to come back to consider this matter.

At that meeting Miss Ngoye said actually there is no Probity

Report it could never have been there because the Probity Officer, his contract had expired already 12 months before this meeting so there could not have been a report.

The decision we then took Chairperson was to ask an audit firm that also served as our internal auditors to do what we called ad hoc tenders' assessment and produce out of that an assurance for us that we can proceed with an award of that tender.

The report came back. It was in the negative we – says no you can't, at that point we then said to Management in then of course
10 this happens at the meeting held in February of the following year.

CHAIRPERSON: 2015.

MR MOLEFE: The Board then says well we have to cancel this contract, ask Management to reissue the RFB.

ADV VAS SONI SC: Before we get to that I just need to raise two issues about the meeting of the 27th of November, Mr Buthelezi, the Chairperson of the FCIP, said to you these are urgent and you should approve them.

MR MOLEFE: That is correct, Chairperson.

ADV VAS SONI SC: What was his position on the Board immediately
20 after the meeting?

ADV VAS SONI SC: Chairperson, actually even before we discussed this matter he gave me a letter of resignation, saying that he is resigning from the Board and it will be effective immediately after that particular Board Meeting of the 27th of November.

CHAIRPERSON: Well just going back to the meeting you clearly said

that the GCEO made it clear at the meeting that the Probity Report was there and it would be furnished, he did not understand why it was not part of the pack that was given to the Board Members, is that right? That is what he said.

MR MOLEFE: That is so, Chairperson.

CHAIRPERSON: Yes. Now, with regard to the then Chairperson of FCIP Mr Buthelezi did he also say that there was the Probity Report – the Probity Report was there, or did he not say that but he did not refute what the GCEO said?

10 **MR MOLEFE:** Chairperson he did not say whether there was a Probity Report neither did he refute what was said by the group CEO.

CHAIRPERSON: Yes.

MR MOLEFE: He did not even say over the last 12 months we did not have a Probity Officer.

CHAIRPERSON: Yes. Yes, but as I understood your evidence you did ask him to give you as Chairperson of this particular committee give you an assurance that processes had been followed. Now, whether or not processes had been followed would that have been evident from the Probity Report or was that request separate from that you were making
20 to him separate from the Probity Report namely give us an assurance that processes were followed that is what you said you asked him so my question is whether that question was going to be answered by the Probity Report or whether that question was separate from the Probity Report? And if it was separate whether he did answer you and said yes processes were followed or whether he did not answer.

MR MOLEFE: The sequence was that we asked for assurance and I recall that leading this discussion was the Chair of the then our Audit and Risk Committee, Miss Zhoro Manasi, and then she went on to say a Probity Report – the availability of a Probity Report would give us that assurance.

Of course, in that discussion Mr Montana said no we can assure we followed process the Probity Report is there. At that point, I think, Mr Buthelezi was taking guidance from the Group CEO given that he is the Chief of, the Head of Operations of the company.

10 **CHAIRPERSON:** And would the – would you know whether the Chairperson of the FCIP report would have been expected to have known if there was such a report before they made their decision or whether it is possible that they could have done their job without having seen that report, seen whether it existed or did not exist?

MR MOLEFE: Chairperson, if they were applying the duty of diligence and care he would have together with his team in the meeting of the FCIP the Finance Capital Investment and Procurement Committee asked Management when they presented to them this recommendation whether there had been Probity. But it would seem like the committee
20 failed to address that question.

CHAIRPERSON: Yes, thank you.

ADV VAS SONI SC: Can I just finish off the regard of the Probity in regard to these two contracts. You say that the Board asked for an Audit Report on these two contracts.

MR MOLEFE: Yes, Chairperson.

ADV VAS SONI SC: And you then say that that report, you call it an assessment report, is annexed as PM3 if you look at the last sentence of paragraph 20 of your affidavit.

MR MOLEFE: Oh, okay. Yes, it is.

ADV VAS SONI SC: Can you please look at PM3 please?

CHAIRPERSON: Tell him – tell us what page PM3 is.

ADV VAS SONI SC: Oh, sorry. It is at page 64 Mr Molefe. What is that document?

MR MOLEFE: The – Chairperson, the document is called Ad Hoc
10 Review of Tenders Braamfontein Depo and Supply of Rails and
Turnouts.

CHAIRPERSON: Yes, thank you.

ADV VAS SONI SC: And if you look at the first page of the document, what is the date of that document?

MR MOLEFE: The date of the document is the 15th of February which is the date on which The Board met to receive this Report and to make a determination on whether to proceed or not to proceed with the tender award.

ADV VAS SONI SC: Now it is not necessary to go through the report
20 because the Board did take a decision eventually.

MR MOLEFE: That is correct Chair.

ADV VAS SONI SC: Can I ask you ...(intervenes).

CHAIRPERSON: Just one second.

ADV VAS SONI SC: Oh sorry.

CHAIRPERSON: The date or rather what I see on page 64 is the month

and the year of the report without the day- any public date. I understood you to be linking the date of the report with a certain meeting of the Board. Is that right? I thought that you were saying that the date of the report is the date of a certain meeting of the Board.

MR MOLEFE: Oh, let me say Chairperson it was during the month February or thereafter.

CHAIRPERSON: At some stage during February.

MR MOLEFE: Ja. I – yes.

CHAIRPERSON: At some stage during February?

10 **MR MOLEFE:** In February.

CHAIRPERSON: Yes okay.

MR MOLEFE: Probably the 25th but we can go to the record to confirm that.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Can I then ask you to look at page 88, the 88 on the top.

MR MOLEFE: Page 88.

20 **ADV VAS SONI SC:** And then you would see in the second last paragraph after the number paragraph 15 they advise what Management and the Board should do. And what is the advice as recorded there? Starting with the word “overall”?

CHAIRPERSON: Well should we not just first hear who are the authors of this report?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Then we know who is advising. It looks like it is the

Group Chief Executive Officer, is that right? The author of the report.

ADV VAS SONI SC: Of – who authored the report? I thought it was the special committee that the Board had appointed.

MR MOLEFE: No, the authors of the report were an audit firm that was providing internal audit work for Transnet. I did not think ... (intervenes).

ADV VAS SONI SC: For PRASA.

MR MOLEFE: For PRASA, sorry.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** For PRASA.

CHAIRPERSON: Well you ... (intervenes).

MR MOLEFE: I ... (intervenes).

CHAIRPERSON: You are Chairman of Transnet now so. Okay, so let ... (intervenes).

MR MOLEFE: I have to speak for Transnet.

CHAIRPERSON: Okay so ... (intervenes).

MR MOLEFE: No the ... (intervenes).

CHAIRPERSON: The document at one page of which is at page 88, is that the page you were looking for Mr Soni?

20 **ADV VAS SONI SC:** Yes.

CHAIRPERSON: Is that the document that Mr Molefe, you say is a report of – did you say the audit of the firm that had been asked to prepare it?

MR MOLEFE: Yes.

CHAIRPERSON: Okay. I was referring to the Group Chief Executive

Officer simply because it seemed to me that that document ends at page 89 and I see that name there. But I see it says responsible official so ...(intervenes).

MR MOLEFE: Yes.

CHAIRPERSON: So responsible official might not mean official responsible for this report for the preparation of the report.

MR MOLEFE: Yes.

CHAIRPERSON: I thought that is what it meant.

ADV VAS SONI SC: No Chair.

- 10 **CHAIRPERSON:** It is not what it means? I was seeing that where it says responsible official and I thought it meant that that is the official that prepared the report. But you are saying, no that is not the position.

MR MOLEFE: The report was prepared by the ...(intervenes).

CHAIRPERSON: An outside firm.

MR MOLEFE: An outside firm but it was working inside.

CHAIRPERSON: Oh within, *ja*.

MR MOLEFE: PRASA on a regular basis.

CHAIRPERSON: Yes okay.

- 20 **MR MOLEFE:** Because it was providing services for that internal audit function throughout.

CHAIRPERSON: Oh okay.

MR MOLEFE: And Chairperson I have not looked at the name. I have not been in PRASA for a long time but I think it was called Sikhela Tlhabiso, I think was the company if I remember very well, *ja*.

CHAIRPERSON: Okay alright. Mr Soni is this clarify so that responsible official ...(intervenes).

ADV VAS SONI SC: I am going to deal with ...(intervenes).

CHAIRPERSON: You will deal with it, okay.

ADV VAS SONI SC: So, can I just put the report in perspective or ask you to put the report in perspective? At page 88, that is the one we are looking at, if you look at page 86 first of all Mr Molefe, page 86 of that report. Have you got it?

MR MOLEFE: Yes.

10 **ADV VAS SONI SC:** You see that the heading is, Overall Conclusion and Recommendations. You see that?

MR MOLEFE: I do. I do see that Chair.

ADV VAS SONI SC: Right. Now we do not need to go through all of that because I just one I think the relevant part is, so they articulate 15 recommendations that they make and those end at page 88.

CHAIRPERSON: I am sorry Mr Soni. I am really sorry to interrupt you again.

ADV VAS SONI SC: No, that is fine.

CHAIRPERSON: Can I know where this report starts and where it ends
20 because maybe that is where my problem is.

ADV VAS SONI SC: Yes, sorry Mr Chair.

CHAIRPERSON: I am thinking it is a particular of pages, the end of the report where it might ...(intervenes).

ADV VAS SONI SC: So, it starts at page 64 Chairperson.

CHAIRPERSON: Yes. And it ends where?

ADV VAS SONI SC: And it ends on page 89 but I will try through the witness to explain how 89 comes about and how it is related to the report.

CHAIRPERSON: Okay, 89 is the page to which I referred earlier as advised?

ADV VAS SONI SC: Yes, that is the page.

CHAIRPERSON: Oh okay. So, I was right about that page being the last page?

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: So Mr Molefe ...(intervenes).

CHAIRPERSON: The reason why I was wondering whether that is where it ends is because if you go to the next page it says 7.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And 7 seems to follow up on 6 at page 88 and that gave me the impression that it is still continuing.

ADV VAS SONI SC: Continuing with the report.

CHAIRPERSON: Okay.

20 **ADV VAS SONI SC:** So, we know that this part of the report which ends on page 88 is paragraph – big paragraph 5 of the report which is headed, Overall Conclusion and Recommendation. Would that be correct?

MR MOLEFE: That is correct Chairperson.

ADV VAS SONI SC: Okay. Then if you look at right at the end of page 88 after the numbered paragraph 15 there are two paragraphs – two

short paragraphs. Do you see that?

MR MOLEFE: I do Chair.

ADV VAS SONI SC: Would you please read them into the record and then I am just going to ask you what you understand them to mean.

MR MOLEFE: The paragraphs reads as follow Chairperson and I read on page 88 of the Annexure. It says;

“Overall Management and the Board must take a decision to accept or reject the non-compliance with the policy of the two affected tenders reviewed.”

10 Then the following paragraph says;

“This recommendation has been discussed with the Group Chief Executive Officer and his response and action plan is reflected below.”

ADV VAS SONI SC: So that is the Overall Recommendation to the Board. I see you shake your head Mr Molefe, does that mean yes?

MR MOLEFE: Well it is. It is the recommendation to the Board Chairperson.

ADV VAS SONI SC: Okay. Then the next paragraph – oh sorry.

CHAIRPERSON: Just one second Mr Soni. Are we able to have a name for this report so when we refer to it we can know what we call it
20 in the mist of all these documents? We can call it by the name of the author if necessary was it Tlhabiso whoever? What report?

ADV VAS SONI SC: Should we call it ...(intervenes).

CHAIRPERSON: I just want that when we refer to it and when anybody reads the transcripts, they can know what report we are talking about.

ADV VAS SONI SC: To identify what the substance is Chairperson I am

going to propose we call it Report on Review of Tenders.

CHAIRPERSON: Report on Review of Tenders.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Report on Review of Tenders.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay alright. That is what we will call it then. Okay, thank you.

ADV VAS SONI SC: Can I then ask Mr Molefe for you to turn to page 89. Now what is that in relation to the report? What does that
10 indicate?

MR MOLEFE: Chairperson the – that page is called Management Response and Action Plan but fundamentally it is a section that says there has been non-compliance and that the tenders should be cancelled.

ADV VAS SONI SC: Does it not go further and say the matter has been discussed with Management and this is how Management responded? If you read the response – the small – the paragraph under the small heading, Response.

MR MOLEFE: Chairperson we recall that we had already referred in
20 the preceding page ...(intervenes).

CHAIRPERSON: Yes.

MR MOLEFE: To the discussion with Management.

CHAIRPERSON: Yes.

MR MOLEFE: I do not see that on this page.

CHAIRPERSON: Yes.

MR MOLEFE: However ...(intervenes).

CHAIRPERSON: It is on the last page – on the previous page, the last sentence.

MR MOLEFE: The previous page.

CHAIRPERSON: Yes.

MR MOLEFE: That was dealt with at that point.

CHAIRPERSON: Yes.

MR MOLEFE: So, it says we have discussed. We demonstrated that there had not been compliance and Management agree with us. And
10 that they therefore propose this Action Plan which must be driven by the Chief Executive Officer, Mr Lucky Montana, Group Chief Executive Officer.

ADV VAS SONI SC: In effect that is summarising what the final outcome was following the publication of the report?

MR MOLEFE: That is correct Chairperson. If I may come in just to say that where they deal with the Action Plan, they state categorically that; “We will design alternative tender procedures to acquire the equipment and services required. Consequence Management would be implemented accordingly.”

20 **CHAIRPERSON:** Now the last sentence at page 88 to which you also referred Mr Molefe. It tells us that what we will find on the next page is the Group CEO’s Response and Action Plan. You see that?

MR MOLEFE: I see that Chairperson.

CHAIRPERSON: Yes. Now when one looks at the next page it refers to, “we”.

“After due consideration of the context of this report from the internal audit consortium, we are of the view that the two tenders are non-compliant and will therefore be cancelled.”

Is it the Group CEO speaking there that is saying that? As you understand the position.

MR MOLEFE: Paragraph 6 says Management Response and Action Plan.

CHAIRPERSON: Action Plan, yes. Which suggest that ...(intervenes).

MR MOLEFE: I imagine it is the Group CEO that is talking as part of
10 the collective.

CHAIRPERSON: Yes, okay. No, I just wanted to understand that because the language seems to suggest to me that maybe it is the Committee still speaking even though it says Management Response. But I think probably I am mistaken. Because later on it says;
“We will design alternative tender procedures to acquire the equipment.”

That “we” must be Management.

MR MOLEFE: Chairperson it is the Management ...(intervenes).

CHAIRPERSON: Management.

20 **MR MOLEFE:** Team ...(intervenes).

CHAIRPERSON: That is talking.

MR MOLEFE: That says that lead by the Group CEO.

CHAIRPERSON: Yes.

MR MOLEFE: And because the Board Committee or the internal audit firm cannot be the one that designs ...(intervenes).

CHAIRPERSON: Yes of course.

MR MOLEFE: These procedures to acquire this.

CHAIRPERSON: Yes.

MR MOLEFE: And secondly it would – the committee would not have taken a view on who should be the responsible officer.

CHAIRPERSON: Yes. So that responsible official that was confusing me earlier must be meaning that is the official who will be responsible to – for the implementation of this Action Plan.

MR MOLEFE: That is correct.

10 **CHAIRPERSON:** Yes.

MR MOLEFE: The owner of the business.

CHAIRPERSON: The owner of the – *ja*, okay. Thank you.

ADV VAS SONI SC: Now following the publication of this report in February or the acceptance of this report seemingly brought by the Board and Management, what happened?

MR MOLEFE: Well Chairperson I did say at that meeting given the recommendation and the – because there is a detailed report of the internal auditors. I think this bundle must be containing that.

20 The Board concurred that it was not the kind of a tender we could proceed with. That a new RFP needed to be issued as a matter of urgency to invite participants. Of course, I must say Chairperson that the – at that time the GCE, well he would have been back in February but he had gone leave as I indicated earlier on that he needed a rest.

ADV VAS SONI SC: So, did you then cancel the tender? Did the Board

cancel the tender?

MR MOLEFE: The Board cancelled the tender Chairperson but the Directors and the Board sanctioned the conduct of the Group CEO that he had mislead the Board when he assured the Board that there was a Probity Report when in fact he should have known that there was no such a report. Because the Probity Officer had not been in place for a period of approximately 12 months.

ADV VAS SONI SC: So, can I just ask you in regard to that issue Mr Molefe. There is no Probity Officer for 12 months, that is what you
10 were told?

MR MOLEFE: Yes.

ADV VAS SONI SC: Mr Montana assures you that there is a Probity Report.

MR MOLEFE: Yes.

ADV VAS SONI SC: You then find out in December that there is no Probity Officer. In terms of the assurance that Mr Montana had given you, what conclusion did you arrive at? In other words, had he made a mistake? What was his state of mind in making that representation to you about the Probity Report?

20 **MR MOLEFE:** Well Chairperson the only conclusion one can draw is that the Group CEO deliberately mislead the Board because he wanted the Board to rapidly approve a tender that was seriously flawed. Because even after it was found that the tender process was flawed, he never came to apologise to the Board for that.

And that is why the Board said there is a need to enforce good

corporate governance in the light of this gross dereliction of duty by the Executive Management Team at the head of whom was the Group CEO.

CHAIRPERSON: Did the Board not after it had been informed by Ms Ngoye that one, there was not any Probity Report and two there could not have been any Probity Report because there was not – there had been no Probity Officer for 12 months.

Did the Board at any stage confront the Group CEO and say, CEO, you told us there was a Probity Report. You know how important that report would have been. Why did you tell us there was a Probity
10 Report when in fact there was no Probity Report? And if the Board did obviously not necessarily in those terms but in effect and if the Board did, what was his answer?

MR MOLEFE: My recollection is that the Board did so. The excuse of the Group CEO is that he was misled, he was told that there was that Probity Report. There was no explanation as to how the Probity Report could have been there if there was no Probity Officer for 12 months.

CHAIRPERSON: Yes. But am I wrong to think that the way he had given the assurance to the Board that there was a Probity Report gave one the impression that it is a document that he had seen or am I being
20 unfair to him?

MR MOLEFE: Chairperson if and the record that show there was no Probity Officers for 12 months preceding the recommended tender. There was no way in which he could have seen Probity Report. Because where would it have come from? Unless it is a concoction of somebody else, it could not have been a proper Probity Report. And

besides the internal audit company would have been aware of that Probity Report themselves as they are the ones that have to advise on the preparation of financial statements which ultimately become part of the Audited General's report.

So, it could not have been that he had seen the report. One can talk at length about these things but the conclusion that one can ask is – that one can arrive at is that the Group CEO and Management most likely were used to the Board of Directors which did not interrogate issues to the extent that this Board was doing. So, all that
10 you needed to do is to write good English, do a presentation in a very articulate way and say that, "I recommend that you approve". And the Board would just approve. *Ja*.

CHAIRPERSON: Thank you.

ADV VAS SONI SC: May I ask and I want to return to that issue in moment Chairperson because I – it is an important issue.

CHAIRPERSON: It is quite important.

ADV VAS SONI SC: Yes. But I will return to it in a moment because I just want to deal with other developments that took place at that time. Now forgetting Mr Montana's state of mind and what you believed
20 prompted him to misrepresent the position to you. What steps did the Board take in regard to Mr Montana's powers following the cancellation of the tenders?

MR MOLEFE: Again, we need to put in context Chairperson these steps. The context is that we now are in a possession of the letter from Mr Montana that says, "Do not extend my contract. I am leaving."

CHAIRPERSON: Yes.

MR MOLEFE: Then the immediate thing that exercises the mind of the Board is that we now know that things can go grossly wrong with the business. It would not be proper to keep the Group CEO who has already told us he is leaving with all the delegated authority of a Group CEO. That is one point. The second one was we also did an assessment and concluded that the Office of the Group CEO was just too powerful. The Group CEO was a Group CEO of PRASA, he was the Chairman of Autopax, he was Chairman of Intersite. And so, we said

10 we think that – we took a decision that we are withdrawing him as a Chairperson to allow those subsidiaries to operate in autonomous way and account for their sins to the Board of Control of the group.

But we also said that we were going to curtail the authority of the Group CEO in respect of procurement. That procurement that he intends proceeding with will have to be approved by the Board. He needs to report on all of these instances. And basically, we are saying things must change. There is a new Board it has got its own new style of governance. It is important for Management including the Group CEO to adjust to this style of Management of the Board – style of

20 governance, sorry.

ADV VAS SONI SC: Is that what you conveyed to Mr Montana?

MR MOLEFE: I did.

ADV VAS SONI SC: Now that ...(intervenes).

CHAIRPERSON: One second Mr Soni. Just to understand where the Board was at this stage. So, the Board had heard an incident or maybe

not incident. Had had a situation where the GCEO – it had asked the GCEO for various contracts and the GCEO had not provided with those contracts. And the Board had had to go outside of the – of PRASA to get a presentation that satisfied the Board. To – did not had – the same GCEO had given the Board an assurance on a very important issue that turned out to be wrong. At that stage after these two situations which had happened, what was the Board's attitude of or towards or understanding of the type of CEO PRASA had?

MR MOLEFE: The concern of the Board was that it had a Group CEO
 10 who could mislead the Board any part of the day but who could also withhold information from the Board. But that being the case, we had to deal with the reality Chairperson that I mean in the normal – things being normal one would have said, why did you not just fire the person instead?

CHAIRPERSON: H'mm.

MR MOLEFE: But I had already referred to earlier on to the assessment made by the Audit and Risk Committee that said the organisation is broken it is dysfunctional. Departments ...(intervenes).

CHAIRPERSON: There were no controls.

20 **MR MOLEFE:** And people who are there do not have the requisite skills to do what they are supposed to do. That is one point. The second point is that we were aware that in any event the person is leaving.

CHAIRPERSON: Is leaving, *ja*.

MR MOLEFE: But we do not readily have a person to fill that position and we are going out to search for an appropriate Group CEO.

CHAIRPERSON: H'mm.

MR MOLEFE: So, we say, well we will leave with this situation provided we introduce certain strictures certain controls amongst which would have been that one of reducing the delegation of authority and certain conditions on not going out to issue tenders without the approval of the Board.

CHAIRPERSON: Okay.

MR MOLEFE: So that is how we were looking at it at the time.

CHAIRPERSON: Yes okay. So, had it not been for the fact that he was
10 about to leave anyway, it may be that the Board might have considered whether it should take any disciplinary action against him.

MR MOLEFE: Ordinarily Chairperson that is what the Board would have had to consider.

CHAIRPERSON: Yes.

MR MOLEFE: Given his own responsibilities.

CHAIRPERSON: Ja. Okay, Mr Soni.

ADV VAS SONI SC: Chairperson, I see it is 13:00 and we are going to get into a new topic.

CHAIRPERSON: Yes. I think let us take the lunch adjournment and we
20 will resume at 14:00. We adjourn.

ADV VAS SONI SC: As you please.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV VAS SONI SC: Mr Molefe you were dealing with some of the

issues that you took into account in deciding how to handle Mr Montana after you discovered that he had firstly not given you the contracts and then he had misled you in relation to the Property Reports mandate.

MR MOLEFE: That is ...(intervenes).

ADV VAS SONI SC: That was all part of the background against which you decided that instead of taking action against him you would sort of ride the storm until he left and you found a new CEO?

MR MOLEFE: It is so Chairperson.

ADV VAS SONI SC: Now there are a couple other matters that seem to
10 fit into that and you say at paragraph 24 that one of those concerned ...(intervenes).

CHAIRPERSON: That is 24 of his affidavit?

ADV VAS SONI SC: Of – as you please Mr Chairman that is SS6. You say that one of those matters was an Interim Report by the Public Protector?

MR MOLEFE: That is so Chairperson.

ADV VAS SONI SC: Okay we – if we could leave out a consideration of the report because that is the final report until later when we will deal with it more – in more detail. Can I just ask you now what was the
20 issue of concern at that time in December 2014 for you?

MR MOLEFE: Is it in relation to the Public Protector's Interim Report or is it a different question Chair?

ADV VAS SONI SC: Okay if you look at paragraph 24 of your affidavit.

MR MOLEFE: Yes.

ADV VAS SONI SC: You say in December I became aware of media

reports.

MR MOLEFE: Okay. Well Chairperson.

CHAIRPERSON: Yes.

MR MOLEFE: Yes in December I became aware of media reports but those reports related to the – what was alleged to have been an interim – a pending report by the Public Protector and at that stage it was reported that the Interim Report had been given to PRASA already.

ADV VAS SONI SC: And in regard to that what was your concern?

MR MOLEFE: My main concern Chairperson was that the Board having
10 been in office for approximately four months had not been informed of that report. It had not – we had not seen it and it was clear that at the time that the Public Protector was concerned that PRASA was not cooperating the information required.

CHAIRPERSON: At the time you became aware of these media reports in December 2014 about an Interim Report of the Public Protector were you aware that there was some investigation that was being conducted by the Public Protector into some issues at PRASA?

MR MOLEFE: No formal information had been given to about the investigations by the Public Protector.

20 **CHAIRPERSON:** H'mm.

MR MOLEFE: But I know that in some casual discussions.

CHAIRPERSON: H'mm.

MR MOLEFE: The GCEO Mr Montana.

CHAIRPERSON: H'mm.

MR MOLEFE: Kept on talking about some Members of the Union who

lied about him.

MR MOLEFE: H'mm.

MR MOLEFE: Who went to complain to the Public Protector and the fact that their Union disagreed with them and had expelled them from the Union.

CHAIRPERSON: H'mm.

MR MOLEFE: That is really the extent of the little ...(intervenes).

CHAIRPERSON: Yes. That you knew.

MR MOLEFE: I can remember of that period.

10 **CHAIRPERSON:** Yes. And would that have been something that you became aware of from as you say a casual discussion with the GCEO?

MR MOLEFE: Yes.

CHAIRPERSON: Yourself as opposed to the Board?

MR MOLEFE: Yes.

CHAIRPERSON: *Ja* as far as the Board is concerned it was not informed?

MR MOLEFE: Yes.

CHAIRPERSON: It had not been informed at that stage.

MR MOLEFE: No the Board had not been.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: Informed.

CHAIRPERSON: Okay. Alright.

ADV VAS SONI SC: Now your own attitude to the fact that matters had been referred to the Public Protector you were aware of that at least? That is why she was producing her report?

CHAIRPERSON: I think what he mean is ...(intervenes).

MR MOLEFE: Well I am saying that I became aware as a result of what was in the media report.

CHAIRPERSON: H'mm.

ADV VAS SONI SC: Yes but the question I am asking is did you make any enquiries as to what are the issues that the Public Protector or had been reported to the Public Protector and the Public Protector would report on?

MR MOLEFE: I did do so Chairperson I did ask about this report after I
10 had seen in the media in a one to one discussion with Mr Montana and that would have been in the new year not – that would have been in 2015.

CHAIRPERSON: Yes.

MR MOLEFE: Not in 2014 at the time.

CHAIRPERSON: H'mm.

MR MOLEFE: And that engagement you know did not yield anything substantive because I was saying if it is so give us the report we want to know what is it that the Public Protector wants.

CHAIRPERSON: So what you – is what you understood from the media
20 reports was that there was an Interim Report of the Public Protector that had allegedly been forwarded to PRASA?

MR MOLEFE: That is correct Mr Chairperson.

CHAIRPERSON: Yes.

MR MOLEFE: To which certain questions were raised.

CHAIRPERSON: Yes. Yes needing answers.

MR MOLEFE: In which certain questions were raised to which PRASA was required to provide answers.

CHAIRPERSON: Yes.

MR MOLEFE: So that the Public Protector could finalise the report.

CHAIRPERSON: H'mm. You made reference a little earlier on to – you said something along the lines that apparently PRASA was not cooperating with the Public Protector. Is that what emerged from the media reports or is that something you heard from elsewhere? Or was that much later?

10 **MR MOLEFE:** Well that matter is dealt with in the report of the Public Protector.

CHAIRPERSON: Yes, yes.

MR MOLEFE: But besides that.

CHAIRPERSON: H'mm.

MR MOLEFE: The Public Protector had requested a meeting with me and I – Directors.

CHAIRPERSON: Yes. Okay.

MR MOLEFE: To appeal to us to cooperate.

CHAIRPERSON: Yes.

20 **MR MOLEFE:** On the issues on the questions that she had wanted answered and the documents that she had requested.

CHAIRPERSON: Ja okay.

MR MOLEFE: And that meeting would have taken place on the 20 – around the 26th of June 2015.

CHAIRPERSON: Ja okay.

ADV VAS SONI SC: At this stage when you heard about a Preliminary Report of the Public Protector did you or any – sorry were the Board Members also aware that there was going to be a report from the Public Protector?

MR MOLEFE: I would not say every Member of the Board but I recall one of the Directors raising it. What I cannot confirm is whether it was in a meeting of the Board or it was only during my discussion with her.

ADV VAS SONI SC: I am asking in this context Mr Molefe in around 2014 you will recall that the then Public Protector Advocate Thuli
10 Madonsela had published the Nkandla Report.

MR MOLEFE: 2014?

ADV VAS SONI SC: The Public Protector.

MR MOLEFE: Was it in 2014?

ADV VAS SONI SC: To the best of my knowledge it was 2013 or 2014.

CHAIRPERSON: I think it was later. Was the Nkandla Report not in
...(intervenes).

MR MOLEFE: I would not – I know there was a – that report called the Captured. I think that this was ...(intervenes).

ADV VAS SONI SC: That was 2017.

20 **MR MOLEFE:** Oh that is a different one.

ADV VAS SONI SC: Yes.

MR MOLEFE: No I was not aware of ...(intervenes).

ADV VAS SONI SC: And I am only putting it in the context.

MR MOLEFE: Because I cannot remember.

ADV VAS SONI SC: I am putting it in this context. The Public

Protector's Report on Nkandla created a major storm in our political space because people were saying, here is somebody who is ensuring clean Government in our country and is holding the holder of the highest office accountable. Whenever it was would you agree with me that that was what the Public Protector's Report on Nkandla was?

MR MOLEFE: Chairperson I do not want ...(intervenes).

CHAIRPERSON: Yes.

MR MOLEFE: Confirm anything about that.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** Because I really cannot recollect.

CHAIRPERSON: Yes.

MR MOLEFE: At this stage as I am sitting here.

CHAIRPERSON: Ja.

MR MOLEFE: But I would not be surprised that that is what it would have said.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: Now I ask in that – in this context you are aware that the Public Protector is investigating complaints about PRASA whether from PRASA people or from outsiders. Did you make any
20 enquires but what are those complaints? What is it that is likely for – is PRASA likely to be embarrassed by the outcome of those investigations?

MR MOLEFE: Chairperson I did ask. I did say I had a one on one discussion with the Group CEO to say there has been these media reports. Take us as the Board or take me into confidence. Do you

have such a report? What are the allegations and what are the questions that we should answer? I never got a proper response until only during March the same year when at the time as we were discussing I also received a letter advising me that Mr Montana is resigning. He is willing to serve six months.

CHAIRPERSON: H'mm. Well let us go back to that one on one discussion you had with him when you asked that – this report.

MR MOLEFE: Ja. Yes.

CHAIRPERSON: If you are able to just give me – tell me the content of
10 the discussion how it went? If you are able to remember. This is what you asked him. Is there such a report, if there is please can I have a copy? What are the complaints? What are the allegations and what was his response? I know you say you did not get – I do not know if said a straight answer but I just want to understand how he responded.

MR MOLEFE: Certain – certainly Chairperson. The approach was there has been these reports in the media about the impending final report and the fact that PRASA was given the Interim Report to respond to in respect of questions which were raised in that report. Can you explain to me whether you have that report and if you do why is it that
20 you have not given that report to the Board? Is there a deficit of trust between you and me as the Chairman – in my capacity as Chairman of the Board or do you have difficulties of trust between yourself and the Board of Control of the company? So this is how the discussion went.

CHAIRPERSON: Yes.

MR MOLEFE: And then of course he says, no I – there are no issues of

trust. So then the next step is then you must give us the report. You need to give that report. It did not come at that time

CHAIRPERSON: Did he confirm that there was such a report or did he not confirm?

MR MOLEFE: He confirmed.

CHAIRPERSON: Yes.

MR MOLEFE: And he says, we – you know I have responded to the many questions that the Public Protector asked. So he says that and – but he does not give us the report and that stage. So I keep asking
10 him until finally I got it in March.

CHAIRPERSON: Now at the meeting he says, I responded to the questions from the Public Protector but does he tell you what the allegations were or does he not? As far as you remember.

MR MOLEFE: He does not deal with the details of allegations safe to say that the Public Protector relied on false reports and allegations given to her by expelled Members of the South African ...(intervenes).

CHAIRPERSON: Transport ...(intervenes).

MR MOLEFE: Transport and Allied Workers Union.

CHAIRPERSON: Yes. Okay thank you.

20 **ADV VAS SONI SC:** But then you do get the report and this was on the occasion of the memorial service for the late Minister Collin Chabane? If you look at paragraph 25 of your affidavit.

MR MOLEFE: It is correct Sir I recall that.

CHAIRPERSON: And did you say you received it at the same time as when you received what we have referred to as Mr Montana's letter of

resignation?

MR MOLEFE: It is correct Chairperson.

CHAIRPERSON: Yes okay.

MR MOLEFE: As he was giving me the file he also gave me an envelope which he said, do not read it now you can read it later.

CHAIRPERSON: Yes.

MR MOLEFE: At home because now we are in a hurry to go to the memorial service.

CHAIRPERSON: Oh okay.

10 **MR MOLEFE:** Of Minister – the late Minister Collins Chabane.

CHAIRPERSON: Chabane. Yes.

ADV VAS SONI SC: Now he then on that occasion Mr Molefe gave you two documents. That letter and the Interim Report that the Public Protector had sent to him and which he has kept away from you for a little while.

MR MOLEFE: That is correct Chairperson. But the file also included exchanges of correspondence between him and the office of the Public Protector. My recollection is that there would also have been letters which had been addressed to the Chair – the previous Chair, the
20 immediate ...(intervenes).

CHAIRPERSON: Your predecessor?

MR MOLEFE: My predecessor – my immediate predecessor and his replies to the Public Protector.

ADV VAS SONI SC: Now when did you first read the Interim Report?

MR MOLEFE: I read the Interim Report I cannot put a date on it but

shortly after I had received it. Part of the difficulties that were – you had that memorial service and we were going to drive.

CHAIRPERSON: Yes.

MR MOLEFE: Travel to the village of former Minister.

CHAIRPERSON: Yes.

MR MOLEFE: Collins Chabane who was laid. So it is probable that I would have read that report.

CHAIRPERSON: A few days later.

MR MOLEFE: A few days later.

10 **CHAIRPERSON:** *Ja.* But when you got whether it was a file or whatever documents from the GCEO which had this report did you also get his answers to the questions that he told you about he had given to the Public Protector?

MR MOLEFE: The – his letters.

CHAIRPERSON: *Ja.*

MR MOLEFE: Included what he called the answers but they were not really responding to ...(intervenes).

CHAIRPERSON: The questions.

MR MOLEFE: The questions Chairman to the Inquiry of the Public
20 Protector.

CHAIRPERSON: Okay.

MR MOLEFE: And to the extent that some document would have been given they were – they did not appear to be authentic documents so there was nobody to authenticate them.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: Is – was that your impression of the documents in the file that Mr Montana gave to you?

MR MOLEFE: That was my impression but of course I must say that I would have also been influenced by my subsequent meeting with the Public Protector. Because the Public Protector then dealt with those matters fundamentally raised about 11 questions which had not adequately been responded to. But he also said besides these questions the documents I have been given I cannot rely on. Because they do not appear to be authentic and PRASA is not willing to
10 authenticate them. And of course I must say the Public Protector had written to a number of other employees and or managers of PRASA but of course everything was going through the office of the Group CEO who did not favour the affected individuals with the correspondence that he had received.

ADV VAS SONI SC: Mr Molefe I want to come back to your reaction to the Public Protector's final report. But just in respect of the Interim Report which you now read I take it would be at latest early in April 2015 what was your reaction to that? And I do not need you to say it I mean to expand on it but was it one of surprise, was it one of well there
20 is not too much wrong? Just your initial reaction to that.

MR MOLEFE: The – well it was quite clear that the critical issues in the Interim Report related to irregularities pertaining to procurement, application of disciplinary procedures of the company and the manner controls within the organisation and so issues of maladministration. Naturally I concluded that there was a lot that we needed to fix or to

answer to. I must also hasten to say Chairperson that there has already been a context to this and that context is what happened on the 27th of November and subsequent meeting held in February of the Board as well as the then Tender Report that the Board received. So clearly therefore there was no way in which looking at that report I could say there was nothing wrong with it.

ADV VAS SONI SC: In fact it – I mean nobody would say there is nothing wrong because the Public Protector even in the Interim Report found a great deal wrong. Would that be correct?

10 **MR MOLEFE:** That is correct.

ADV VAS SONI SC: Now you then say that after these exchanges between you and Mr Montana relating to the Public Protector's Interim Report and his letter of resignation that you were in Knysna when Mr Montana asked you for a meeting. Would you tell us about that meeting please?

MR MOLEFE: Chairperson I think we are separating the two so that there is no confusion.

CHAIRPERSON: Yes, yes.

MR MOLEFE: The meeting with Mr Montana relating to whether he had
20 or did not have the Interim Report of the Public Protector is separate.

CHAIRPERSON: Was a one on one.

MR MOLEFE: One on one. And then of course later on in April when I was away he called he asked to see me in Knysna and to which I agreed.

ADV VAS SONI SC: Yes. And what happened at that meeting?

MR MOLEFE: In that meeting – well I must say that Mr Montana is a prolific writer. So he had written a lengthy document ...(intervenes).

CHAIRPERSON: Letter or memorandum.

MR MOLEFE: *Ja* on the issues that he was concerned about. But central to the issues that he was raising would be either relating to what he considered to unacceptable conduct by certain Directors or what he believed is my style of leadership that made him uncomfortable. But he was basically saying you have been appointed, I respect you, you are my leader but I was not even consulted when
10 these appointments were done and you have done quite a number of things that I am unhappy with. Amongst them you went and had a discussion with the Webber Wentzel lawyers I was not there. You did not even ask me first. You asked for a meeting with the CEO of Gibela Consortium Mr Mark Granger. You – I have been observing the behaviour of this Board and I think that I am convinced that the extra ...(indistinct) purpose of this Board's appointment was really to get rid of me. Its mandate was to get rid of me as the GCE of PRASA. And he raised concern also about the Minister. So it was as I say a litany of complaints. Lots of things you know. A lot and lot. And then of course
20 there was also the complaint that certain Directors who for example the Chair of the Audit and Risk Committee he – the Chair of Health and Safety Committee I cannot remember the exact name that they were behaving in a manner that he considered disrespectful you know to him. The – so there were a lot of these sort of things and of course I did say to him, your impression about us is wrong. We are not intent – we are

not here to remove the Group CEO from the company. But even at that stage it was already an academic exercise Chairperson because the man had already submitted a letter informing us that he is not going to have his contract extended. He has resigned and I did say that even to use the word resignation is a misnomer because when the contract ends it ends. So basically we had agreed with him that he could serve another six months to help us to get a new CEO. So it is strange that a person who says, I am not renewing my contract, I am going, but would rather have for this short period conflict and tensions. And it does not

10 say because there are these tensions I am leaving now. He wants to stay there but he wants the tensions to continue, conflicts to continue. I do need to say that around that period also there were lots of you know public statement or interviews by Mr Montana. And by that time the – what was fundamentally a corporate governance issue demanded executed by the Board and the standards to which the Board wanted to hold its Group CEO was reduced to no, no we are contesting for power it is me versus Molefe. And there were extensive reports that then portrayed it as this so that you reduce what is fundamentally a problem that affects this organisation and it is not a problem per se sucked from

20 the air it is a problem that finds its genesis from reports, documents you know, flawed contracts, all of these things that I have referred earlier but that was shifted, no you do it because you – you do not like me. Because I need to say also one of the issues raised was that when I attended and FCIP, Finance

CHAIRPERSON: And Investment.

MR MOLEFE: And Investment.

CHAIRPERSON: Procurement ...(intervenes)

MR MOLEFE: Investment – Capital Investment and Procurement Committee.

CHAIRPERSON: H'mm.

MR MOLEFE: But I should not have attended that meeting and in the meeting, which of course the GCE was present in, he says I am not a Member of that Committee, the Chairperson of the Board is not a Member of this Committee, but he was the one who was asking the
10 most difficult questions, it was quite clear to me that the Chairperson of the Board was already by that time laying a basis for my dismissal.

Now in many companies that I have been a Director or Chairman of the Board it is taken that the Chairman of the Board has ex officio status, can attend a meeting of any committee and he will have speaking rights like any other member, and it is also good because it assists to keep the chairperson informed in advance instead of waiting only for when the said committee is reporting to the Board, so I am mentioning all these things because it does appear like at a certain point once Mr Montana had taken a view that he is not renewing his
20 contract he began to clutch at the straws to find reasons for tensions to be there, within the organisation, because ordinarily you don't do that if you have decided you want to go, especially when you make this decision against a backdrop of the fact that the Chairman of the Board had appealed to you actually not to leave that early.

CHAIRPERSON: I was about to refer to that.

MR MOLEFE: Given this ambitious modernisation program, which is a very historic mission for the country, but he decided regardless of what you are saying I am going, I had previously told the previous Chair that I am not wanting to stay long.

CHAIRPERSON: So as I understand part of what you are saying it is this; he wrote a letter or was it a memo or whatever ahead of your meeting with him where among other things he made the accusation that this Board, your Board, had been appointed for the purposes of getting rid of him, is that right?

10 **MR MOLEFE:** He did write a letter to me Chairperson and it is in the notes that he had written.

CHAIRPERSON: Yes.

MR MOLEFE: And taking me through that, in a sense a form of an agenda, but at a later stage we can talk about the document written which then deals with those questions.

CHAIRPERSON: But he said this in the meeting?

MR MOLEFE: He says them in the meeting *ja*.

CHAIRPERSON: In the meeting and he says this despite the fact that after your appointment as Chairperson of the Board and I think from
20 what you said it was the first encounter you had with him after an appointment where he was congratulating you that he told you that he had already told the previous Chairperson that he would not be renewing his contract, is that correct?

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: And you were the one who then said you would have

to stay around to assist the Board.

MR MOLEFE: That is correct.

CHAIRPERSON: So in other words on your arrival when he told you of his plans to leave you were talking to him on the basis that we might need you for some time, is that right?

MR MOLEFE: I didn't even say we might need you Chair, I said the organisation needs you to carry out an ambition program, how do you expect the new Board to come into office and as it comes into office ...*(intervenes)*

10 **CHAIRPERSON:** Yes.

MR MOLEFE: The Group CEO walks out.

CHAIRPERSON: Yes, and part of the point you are making is that when one has regard to what you said to him on that occasion it is – it does not support the accusation that this Board was appointed to get rid of him.

MR MOLEFE: It doesn't Chair.

CHAIRPERSON: Yes.

MR MOLEFE: The facts would not support that.

CHAIRPERSON: *Ja*, okay.

20 **ADV VAS SONI SC:** Now just regarding that meeting he as you put it – or firstly was a short meeting or a long meeting?

MR MOLEFE: It was a very long meeting Chairperson but most of the time it was Mr Montana talking, he is a very articulate person and he is a very good thinker as well, and as I said he writes well. So he was talking through ...*(intervenes)*

CHAIRPERSON: Just so that I don't miss this that meeting was just between the two of you?

MR MOLEFE: It was just between the two of us, it was one on one.

CHAIRPERSON: Yes. Okay.

ADV VAS SONI SC: And the venue was where?

MR MOLEFE: I think the venue of the meeting was the Golf Estate called Simola, Simola I think Golf Resort or Golf Estate, it is in Knysna, and I am a Member of that Club.

ADV VAS SONI SC: Now it is a fairly long meeting, Mr Montana makes
10 a number of allegations against you, I just want to deal with one point which you raised, he says but you and your Board were appointed and I was not consulted, that's what I understood your evidence to be a little while ago, is that correct?

MR MOLEFE: That is correct.

ADV VAS SONI SC: What was your response to that?

MR MOLEFE: Well my response to that is a simple one, as a
shareholder who appoints the Board of Directors I mean there is
nothing I can say about it and I don't know of a CEO who determines –
who becomes a Director of the company that he is the CEO of. I
20 suppose of course the CEO nothing bars him or from nominating or
giving names to the shareholder to say as you consider the Directors
consider these names as well, and of course giving profits and
motivation for each one of the names.

CHAIRPERSON: H'mm, h'mm.

ADV VAS SONI SC: But you even at that stage Mr Molefe were

experienced in these matters, you know how Boards are appointed, you know, as you have articulated now the powers of the CEO on the one hand and the Board on the other. As a matter of correctness, correct procedure and ...(indistinct) was he right to say he ought to have been consulted?

MR MOLEFE: Not at all, he was not right to have said so, and I must say Chairperson I didn't think that for the first time I had been Chairperson of by that time already three State Owned Companies, the Armaments Cooperation of South Africa, ARMSCOR, I had been the
10 Chairman of Petroleum and Gas Corporation of South Africa, PetroSA, and I ja PRASA was the third one but I had also served on the Board of CEF Group of Companies, which is what used to be known as the Central Energy Fund, I had served also already on the Board of the Strategic Fuel Fund of the Government of the Republic of South Africa.

CHAIRPERSON: And you knew ...(intervenes)

MR MOLEFE: So I knew how Boards are appointed, procedures, the relationship and roles of the Board vis a vis the CEO.

CHAIRPERSON: And you did not know of any State Owned Entity or any even private sector maybe where there was an obligation on the
20 part of the appointing authority to consult the CEO about who the Board Members should be, other than a situation where the CEO might just put names for consideration and that's all?

MR MOLEFE: That is correct Chairperson, I had no precedent ...(intervenes)

CHAIRPERSON: Yes.

MR MOLEFE: Deriving from any Government or legislative instrument which would have empowered the Group CEO to make a determination as to who becomes a Director in the company, whether in State Owned Companies or in private companies. The only time when that could arise is if it is a private company where the CEO is the majority shareholder and decides that I want more people or it is a family business and want to bring in people onto the Board.

CHAIRPERSON: H'mm, h'mm, yes.

ADV VAS SONI SC: Now did you say to Mr Montana look man why
10 would the Minister want to consult you before he appoints us?

CHAIRPERSON: Just repeat the question for me.

ADV VAS SONI SC: Did you say to Mr Montana but look why would the Minister want to consult you, that doesn't happen anywhere.

MR MOLEFE: I did not say so but certain things are better left unsaid.

ADV VAS SONI SC: I was just going to come to that. Now he makes this number of other allegations against you, you assure him that look your agenda was not to get rid of him.

MR MOLEFE: Ja.

ADV VAS SONI SC: But the other allegations now how did you
20 respond to the other allegations, you say he did not ...(indistinct). How did you respond to that?

MR MOLEFE: There were – well maybe whilst I am here I must also introduce another allegation that arose. His other concern was that the Board of Directors, the Directors would want to have an in-committee meeting of Non-Executive Director without him being there.

Now that is provided for, I mean it is allowed in the King Report and so on, if the Directors want to discuss amongst themselves matters that they don't want to be coloured by the influence of Management they do that, so there were several such meetings and he says no he is not happy about that. The other issue he raised was that the Chairman was not ...(intervenes)

CHAIRPERSON: I am sorry before that was his complaint in regard to a situation where Board Members sit alone in committees to discuss certain issues without anybody from Management or was his complaint
10 that Board Members in committees were discussing matters in the presence of some Members of the Management?

MR MOLEFE: Let me first explain Chairperson what I mean when I talk of in-committee.

CHAIRPERSON: Yes.

MR MOLEFE: In-committee means a meeting where certain people may not sit but which is a meeting of the Directors on their own because of issues they wanted to consider on their own, which issues anyway in a formal Board Meeting would be tabled as well. So the in-committee does not refer to committees of the Board.

20 **CHAIRPERSON:** *Ja*, it includes other people who otherwise don't belong to those – the Boards.

MR MOLEFE: Yes, *ja*, that's right.

CHAIRPERSON: Yes so his complaint ...(intervenes)

MR MOLEFE: Is why are you meeting ...(intervenes)

CHAIRPERSON: Why are you meeting with my teams ...(intervenes)

MR MOLEFE: And you don't meet, are you already suspicious of the Board but why are you meeting.

CHAIRPERSON: Yes, okay, okay, thank you. You were about to deal with another point when I interrupted you in regard to Mr Molefe, I may have caused you to forget the point you were about to deal with, but I interrupted you while you were taking the issue further.

MR MOLEFE: Chairperson I was asked what was my response to this that I called a litany of complaints.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** Along we deal with what comes to mind as I am sitting.

CHAIRPERSON: Alright, no that's fine, Mr Soni we will repeat the question if he ...(intervenes).

MR MOLEFE: But the general response was that his perceptions and his fears were misplaced, it was not true. Secondly to the extent that he was accusing certain Directors, I requested him to present that report – all those complaints, to the Board Meeting and in fact even before the next Board Meeting I asked him are we going to present this detailed report, should I report to the Board what you say, he says no you can just say that we have met and I expressed my concerns and so
20 on. So that's how he presented, he didn't want to present this detailed report, of course until, we will deal with it later on, when suddenly we see strange Management, what is called Management report to the Board and making certain allegations as well, and again it is long after the person said I am leaving.

CHAIRPERSON: Okay.

MR MOLEFE: And the Board had agreed with him to go, but I agreed let's work together to search for your replacement.

CHAIRPERSON: H'mm, h'mm.

ADV VAS SONI SC: Mr Molefe I am trying to piece all of this together and if I could just ask you to consider the following, earlier you said one of the reasons – one of your observations was that Mr Montana was leaving but instead of leaving gracefully and peacefully he was creating more storms and strife between himself and the Board. I am just trying to paint a picture; would that be correct?

10 **MR MOLEFE:** That is correct.

ADV VAS SONI SC: Now I get the impression from your response to the complaints he made and your measured response that you were trying to do the opposite, you were trying to calm the water as it were to say we've got a few months to go let's just tolerate each other without putting the house on fire as it were.

MR MOLEFE: That is correct.

CHAIRPERSON: Just to go back to the question that Mr Soni asked before this one, was your impression that Mr Montana was trying to create tensions and conflict between himself and the Board, or was
20 your impression that he was trying to create conflict and tensions between himself and yourself as Chairperson of the Board or it is just that being Chairperson you were first among equals in terms of the Board but it was not just about yourself, it was more about the Board, even though it might seem it was tension between yourself and him that was intended.

ADV VAS SONI SC: That is correct Chairperson, the starting point if you want to create turmoil, a storm go for the Head of the Board, particularly when that person is a public figure and therefore a newsmaker, you do that, but he didn't limit it to that. I did say that he was also raising issues about ...(intervenes).

CHAIRPERSON: Certain Directors?

MR MOLEFE: Certain Directors.

CHAIRPERSON: Yes.

MR MOLEFE: But interestingly enough there were other Directors who
10 were on the Board and who had previously been with him in either the Board of Subsidiaries or Main Board. He found nothing wrong about them, so they never featured it was these new ones where there were problems with him.

CHAIRPERSON: So was your observation quite clear that the people – the Directors that he seemed to have issues with were Directors who had not been either at the PRASA Board or at a Board of the subsidiaries of PRASA prior to your coming to PRASA?

MR MOLEFE: That is correct.

CHAIRPERSON: Okay, thank you.

20 **ADV VAS SONI SC:** So those were the two camps that he created. In other words distinguishing those Directors from the new Directors.

MR MOLEFE: Well that was the attempt, but it didn't happen because the Board was united, because it was not about the personalities, the Board was more concerned about how do we give effect to the principles of good corporate governance and how do we make sure that

we account for our work and we hold those who report to us accountable, that really was what the Board was concerned about.

ADV VAS SONI SC: Now thereafter if I could just go chronologically and we are going to deal with a matter that is raised in your affidavit quit prominently, namely Mr Roy Moodley, but thereafter there were two important developments as set out in your affidavit.

The first the final report of the Public Protector in regard to the complaints laid by PRASA employees.

MR MOLEFE: That is correct.

10 **ADV VAS SONI SC:** And when was that about?

MR MOLEFE: Well the – my recollection is that the final report of the Public Protector would have been on or about August 2015.

ADV VAS SONI SC: August 2015.

MR MOLEFE: By that time Mr Montana had exited PRASA.

CHAIRPERSON: He had left at the end of July or – of 2015?

MR MOLEFE: He had left on the 15th of July.

CHAIRPERSON: Okay.

ADV VAS SONI SC: And then the other one was that the Board had decided to appoint a set of attorneys to conduct forensic investigations
20 into a number of matter. That's Werksmans Attorneys.

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: And the letter ...(intervenes)

MR MOLEFE: But I must state that the appointment of the firm of attorneys to investigate was a consequence of the Auditor General Report, because it happened even before the Public Protector Report

came out and we saw what were the findings and remedial action required of us, and it is precisely for that reason that when it happened we agreed that the scope of these investigators should include matters raised by the Public Protector. That would have included Chairperson also engaging with National Treasury and Ministers and the officials in the Department of Transport and agree that in view of the fact that PRASA Board had already started the investigation let everybody else be coordinated by the Board as a centre of this investigation.

ADV VAS SONI SC: So we have come back to those but those
 10 investigations, from Werksmans and from the Treasury, result in two cases, would I be correct, and you deal with them at paragraph 33 of your report, I mean of your affidavit, sorry.

MR MOLEFE: My affidavit ...(intervenes).

CHAIRPERSON: I wonder if I can interrupt you Mr Soni and Mr Molefe, because I think we are towards the last months of 2015 now. Can I take you back to the time when Mr Montana actually left PRASA, you just told me he left on the 15th of July? Can you describe to me what the relationship was between yourself on the one side and the Board, and him on the other as at the time of his departure?

20 **MR MOLEFE:** At the time of Mr Montana's departure the differences between the Board and him had crystallised, it means they had become intense and we – maybe I should leave it at that, so that I make space for further questions.

CHAIRPERSON: Okay, not that's fine, I just wanted to have an idea because we have been talking about the relationship between the Board

and him and at a time when he had given his letter of resignation in codes and then I didn't hear whether there was anything of importance that might have happened around the time of his departure and how the relationship was, but you have indicated now that at the time he left the tensions and the challenges had crystallised.

MR MOLEFE: Yes Chairperson let me also remind you that the purpose for Mr Montana staying on beyond the expiration of his contract on the 31st of March was in order for him to assist the Board to sail a steady ship for six months, whilst it sought to appoint the
10 Group CEO.

By the – by July of that year – the year – the July following the 31st of March it had become clear to the Board of Control of PRASA that the purpose for which we were keeping Mr Montana was not being served by his presence because he is creating instability, something contrary to what we sought to achieve by keeping him for six months. It was at that point when we said look your stay here serves no purpose anymore, by that time there had been just a barrage of media reports attacking the Board, literally every week and so we said look it will serve the company better if we let you go now.

20 **CHAIRPERSON:** Well I am interested in that so just for clarification he tendered – he gave the Board his so-called of resignation ...(intervenes).

MR MOLEFE: That is correct.

ADV VAS SONI SC: And he would – did he do that before the end of 2014? Or when would he have given you his letter of resignation,

would it have been before the end of 2014?

MR MOLEFE: No, no, Chairperson he gave me that letter during the month of March and it is on that occasion when he gave me the interim report of the Public Protector, that file.

CHAIRPERSON: Yes, okay.

MR MOLEFE: And in that letter he says he is availing himself to assist the Board for six months whilst it is looking for a new CEO. Of course he called that notice, it is not notice because the contract had expired.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** But it was neither here nor there, the critical issue was are we willing to stay with him to keep the company to the extent possible, and of course you would have also not – or just letting him go and struggle to find somebody with relative authority in the company.

So we chose the latter to keep him in.

CHAIRPERSON: So, so he – the 31st of March 2015 was in terms the last day of the contract, the 31st of March.

ADV VAS SONI SC: That is correct.

MR MOLEFE: That was the last day, but by special arrangement which was your request as the Board that he stay on and you had said for six
20 months to help you find his replacement. Is that beyond the 31st of March?

MR MOLEFE: That is correct sir.

CHAIRPERSON: At that stage the contemplation was that he would stay for six months.

MR MOLEFE: It is so Chairperson.

CHAIRPERSON: Yes but after a few months the Board became concerned, as I think that's what you are telling me, became concerned that is continued stay at PRASA wasn't helping the Board in the manner in which the Board had hoped it would help them.

ADV VAS SONI SC: That is correct.

CHAIRPERSON: And therefore the Board asked him to leave, is that right?

MR MOLEFE: To leave, that is correct.

CHAIRPERSON: Okay, alright, thank you.

10 **ADV VAS SONI SC:** Now can I then turn to a special – a specific topic that you deal with in your affidavit, namely, Mr Roy Moodley, PRASA and yourself. And that starts at paragraph 34, Mr Molefe.

CHAIRPERSON: Maybe before that I am sorry again Mr Soni. Mr Molefe what was Mr Montana's reaction when The Board asked him to leave before this part of the six months that had been indicated, what was his reaction to that? If you are able to remember? Did he said kind of accept or then he ...(intervenes)?

MR MOLEFE: Chairperson, I can't remember reaction but the reality is that his reaction would not have mattered after the Board had arrived at
20 the conclusion that his stay ...(intervenes).

CHAIRPERSON: Yes.

MR MOLEFE: He is not serving the purpose of the company.

CHAIRPERSON: Yes.

MR MOLEFE: And the purposes for which the Board had wanted him to stay. Had asked him to stay for an additional six months

CHAIRPERSON: And do you remember whether the Board had just asked him to stay without stating why it was asking him – I am sorry, the Board had asked him to leave before the expiry of six months without stating why it had come to conclusion or do you remember that it did actually tell him that I am sorry we think your stay is not serving the purpose for which we wanted you to stay

MR MOLEFE: We did inform him that his – the limited stay that he had there he rigid a lot of havoc. He did not serve the interest of the company the Board has now decided to release him immediately. The
10 Board would pay him. In fact we probably should not have done so but we paid him for the balance of the six months ...(intervenes).

CHAIRPERSON: Of the six months, yes.

MR MOLEFE: Because in reality, that was not really the notice period.

CHAIRPERSON: Okay so when he left he knew that the Board – the reason why the Board asked him to leave prior to the expiry of six months, was that the Board did not think that his continuous stay served the purpose for which he had been asked to stay.

MR MOLEFE: That he understood.

20 **CHAIRPERSON:** Yes, thank you.

ADV VAS SONI SC: Mr Chairman I am wondering and just for completeness sake, so you do not get a somewhat incomplete picture. I can refer the witness to a particular document which addresses ...(intervenes).

CHAIRPERSON: That is fine

ADV VAS SONI SC: This issue in a different way but it addresses this issue

CHAIRPERSON: *Ja.*

ADV VAS SONI SC: Mr Molefe may I ask you to look at annexure PM4 to your affidavit it appears at page 147. Have you got it in front of you?

MR MOLEFE: Yes, I have got it

ADV VAS SONI SC: What is this document Mr Molefe?

MR MOLEFE: The document Chairperson is a Notice of Termination of
10 contract of Mr Montana on – dated 1st of April 2015.

ADV VAS SONI SC: Now just for identification purposes, this is a letter written by yourself to Mr Montana?

MR MOLEFE: This is so Chairperson, it is a letter written by me in response to his letter where he advised us that he was not intending to extend his contract and that he would assist the company for six months. So, in a sense it is an acknowledgement of acceptance of the decision that he had made.

ADV VAS SONI SC: But in regard to the period of notice. The letter responds to him not as one of total acceptance but of conditional
20 acceptance of the six-month period. May I ask you to look at paragraph 2 on page 147.

MR MOLEFE: Paragraph 2 on ...(intervenes).

CHAIRPERSON: Maybe, maybe we should ask Mr Molefe to give the gist of what he said in the letter to Mr Montana first and then we can go to this specific paragraph without reading the whole letter simply the

gist.

ADV VAS SONI SC: Now Mr Montana says to you in his letter which we do not have that I want to leave but I would like to serve a six-month period. You respond to that in that in this letter PM4 to SS6 and you acknowledge receipt of that letter. In essence how did you respond to his offer that he will serve a six-month notice period?

MR MOLEFE: My response – the response well acting on behalf of the Board was to accept his request to stay on for six months because I said that will give the Board sufficient time to find a replacement for
10 him and this is what he has asked for as well in his letter but we did say in the letter – I did say in the letter also that should the process of recruitment result in the possibility of the new candidate being able to start earlier than the expiry of the six months, we would therefore ask him to leave early.

And then we also said in our letter that we will communicate with him specific measures what probably one would call interim measures and during this period when he is there and I had earlier on as part of my evidence referred to these matters relating to delegated authority, procurement and the need for the Board to be informed
20 ...(intervenes).

CHAIRPERSON: To be consulted.

MR MOLEFE: The Board to approve such procurement measures.

ADV VAS SONI SC: In essence Mr Montana can I ...(intervenes).

MR MOLEFE: And we also ask him that he would not – he should not make any further appointments.

ADV VAS SONI SC: Now in essences relating to Mr Montana's leaving and the possible date of his leaving. You get a letter to say I am not going to renew my contract at the end of March but I would like to serve a six-month notice period that would be the end of August. Would that be correct? I want to continue until the end of August.

MR MOLEFE: No six months from the (intervenes).

ADV VAS SONI SC: In April. It might be October. Six months from April 1, May, June, July, August ...(intervenes).

ADV VAS SONI SC: End of September.

10 **CHAIRPERSON:** End of September *ja* would be six months *ja* right. Fine.

ADV VAS SONI SC: You say in principle yes, we reserve our right to ask you to leave early ...(intervenes).

MR MOLEFE: Yes, that is correct.

ADV VAS SONI SC: That is the essence of the two letters

MR MOLEFE: That is correct.

CHAIRPERSON: Now we do not have our as I understand the position Mr Montana's letter, so called letter of resignation here in the bundle as I understand the position. I see that your letter to him that we are
20 talking about now has Notice of Termination of Contract as the subject of the letter. You see that?

It says Notice of Termination, your letter to him. Did you put that heading or that subject on your letter because his own letter bore the same subject or how did you come to put that subject?

MR MOLEFE: Where I am seated now, I cannot remember exactly?

CHAIRPERSON: You cannot remember?

MR MOLEFE: What exactly what the subheading the subject of his letter was.

CHAIRPERSON: Yes.

MR MOLEFE: But I would imagine that I would have put that notice of termination of contract because that is how he would have formulated his subject.

CHAIRPERSON: Subject on his letter.

MR MOLEFE: His subject.

10 **CHAIRPERSON:** Yes okay, so this letter that you did, your letter was not a notice to him of the termination of the contract.

MR MOLEFE: *Ja*, it is really an acceptance of what he had requested because he called that notice of termination himself.

CHAIRPERSON: Yes, yes okay.

MR MOLEFE: But Chairperson ones to says well you do not have Mr Montana's letter of resignation by the way ...(intervenes).

CHAIRPERSON: I did not see it and I had ...(intervenes).

MR MOLEFE: I do not work for PRASA and my access to information is not easy. I have tried to find it. I have not been able to find it.

20 **CHAIRPERSON:** Yes, yes. No that is fine. That was not meant as criticism for you that you did not supply us it was just stating because one I did not see it and two Mr Soni seems to have suggest, to have confirmed that we do not have it but it was not meant to say that you supplied us with your response but you did not supply us with his letter to you so that was not criticism okay.

ADV VAS SONI SC: Now let us deal with Mr Roy Moodley.

MR MOLEFE: Chairperson before we deal with Mr Roy Moodley, I just want to check if counsel in talking about the appointment of investigators and making reference to Werksmans and then saying actually two major cases arose as a consequence I do not know whether you wanted to counsel wanted to say something about that

CHAIRPERSON: Yes, yes and you realized that he seems to have moved from that, yes ...(intervenes).

MR MOLEFE: Or maybe ...(intervenes).

10 **CHAIRPERSON:** Yes, I remember something like that as well. It has been a long day.

MR MOLEFE: Maybe it was mentioned because it will come later.

CHAIRPERSON: Yes -yes.

ADV VAS SONI SC: Okay so both those matters are quite important to this Commission and they are both going to be dealt with the Sifambo matter through you, because you were the applicant in the matter now we will deal with judgments in the High Court and the Supreme Court of Appeal through you and place that on record.

20 We will also deal with the Public Protector's Report through you. The Sifambo matter we will deal with through Miss Ngoye because she filed the affidavit that are now before this Commission.

MR MOLEFE: Okay.

ADV VAS SONI SC: But I just headlined them, Mr Montana, and perhaps I should have completed it to say we are going to come back to those matters.

CHAIRPERSON: Yes, okay. Thank you.

ADV VAS SONI SC: So, this Mr Moodley, why are you so reluctant to get into Mr Moodley?

MR MOLEFE: Did we not hear yesterday what a powerful man he is? No, I am not reluctant I just wanted to make sure that nothing fell through the cracks.

CHAIRPERSON: Yes. No, no. That is true and it has got nothing to do with the fact that Mr Moodley's counsel is sitting opposite you.

MR MOLEFE: No, no. In fact, I did not even notice that he had the
10 kind of powers that they say he has but I cannot refuse what they say.

CHAIRPERSON: No, that is fine. Mr Soni.

ADV VAS SONI SC: Now, you start your observations on your dealings with Mr Moodley by dealing with the *modus operandi* of people who are involved in State Capture, can you explain to the Chairperson how you understand their *modus operandi*. And it may not be one but the ones that you have experienced.

MR MOLEFE: Chairperson, the phenomenal State Capture itself entails the repurposing of institutions or organisation in order to achieve the objectives of those who are intent of those capturing those
20 institutions. Now, one cannot proceed and capture something by simply working from outside because they will be resistance. The *modus operandi* as we have observed over a period of time when we really saw this thing was that those who want to capture the State or PRASA in this instance would first identify key decision makers and the extent of their influence and capture them first.

Having captured them then they tend to manipulate or compromise them so that lucrative contracts that that institution would be issuing would be directed to where those who are capturing it want them to go. Quite often these individuals would know what is the program – capital program of the company, what are the key projects that are going to be coming and in each instance what is the budget allocation for them, and this is how they then begin to engage in capturing the State. So ...(intervenes).

ADV VAS SONI SC: So, sorry – sorry.

10 **MR MOLEFE:** So carry on. No, sorry.

ADV VAS SONI SC: No, no sorry. So I was just trying to articulate a different issue namely the – what is the in-game of State Capture?

MR MOLEFE: What we now know Chairperson the end game of State Capture is to syphon off funds to loot if you were to say so. Put your hand your fingers on the public trail and take as much and they could take out of the public trail. Of course it has got dire consequences for a large number of people, you know ordinary people, not that company or organisation is serving, and the general interest of the public provided for within the framework of the Constitution of the Republic
20 and the mandate of that particular organisation in terms of the legal instruments in terms of which it has been formed or established.

ADV VAS SONI SC: Mr Molefe you say that you cannot capture from outside you have got to be inside.

MR MOLEFE: Yes.

ADV VAS SONI SC: Now, firstly how does – and you say you capture

certain people in the organisation, capture in what sense and how?

MR MOLEFE: Well the – I suppose there are various ways in which they do it but the starting point is to get closer to people holding this important positions and making themselves acceptable to the people in this positions.

CHAIRPERSON: Get them to dance to your tune, so to speak.

ADV VAS SONI SC: Get them to dance to your tune.

MR MOLEFE: They do so and get to them to dance to your tune or actually act like your proxy's inside the company and of course to this
10 extent there will be distribution of benefits, resources, offers of things freely in a sense having been given all of these things or being made to be a close associate of the affected individuals who are planning to capture the institution result in them becoming behold them – to them and in many ways they deliberately compromise people by, you know, monies giving them money doing all kinds of things, inviting them to important functions, drawing them to functions where there are very senior public figures just to demonstrate who they are associating with and how strong they are. So, generally that is what they do. If you get into a company and you do not know them the first thing they will do
20 they would approach those who are inside the company to arrange for them to come closer to you because they then need to study you to understand you and begin to make certain offers to you as an individual who would later of course then would also exercise influence with the hope that that influence would be of a manner that would benefit them or their allies.

ADV VAS SONI SC: Now, in respect of Mr Moodley when did you first get to know him?

MR MOLEFE: I really got to know Mr Moodley after I had become the Chairperson of PRASA. The very first instance where I met him closely was when I had been invited by Mr Montana to attend the intertrans the global – the huge global exhibition business and Mr Moodley was there but it also it also happened that he stayed in the same hotel where I was staying and the same floor.

Where I was staying so that is how it comes and then of course as I
10 come there walking from the shops I see 3 men waiting next to the hotel and as I approach they greet me. One of them turned to be Mr Moodley and that is where it then starts. At the intertrans we get into this big exhibition hall clearly somebody had told Mr Moodley which entrance I am going to be using because he was waiting for me at that entrance with a business partner of his a man called Mike, I forget the surname now but I will remember it during the course of this evidence, but he is a Spanish guy, and they representing themselves as if they were my hosts.

CHAIRPERSON: As if they were?

20 **MR MOLEFE:** They were hosting me.

CHAIRPERSON: Oh.

MR MOLEFE: So and then they say let us take you to our stand at which point I said no, no I cannot go to your stand I have my own plan, what I want to see. If by the end of all that I have time I can come to your stand. That is how I met him for the first time.

ADV VAS SONI SC: And where was the show?

MR MOLEFE: The show was in Berlin in Germany.

ADV VAS SONI SC: And from PRASA's side who was there?

MR MOLEFE: Well, I would not be able to give the exact number of individuals, but the Group CEO was there, I think, Mr Daniel Mthimkhulu as a man who was then called Executive Manager or he was like the guy who was really driving the Rolling Stock and Rail Procurement Programme including the locomotives that we spoke about earlier on. Ja. That – there were others there were other junior
10 employees well other managers in the team.

ADV VAS SONI SC: And Mr Moodley was he there in his personal capacity or was he there under PRASA's flag if I can put it that way?

MR MOLEFE: I would not know how under what auspices he was there my assumption was that because he was the service provider of PRASA as I had been told. He was there as somebody interested in opportunities maybe in the space of rail or so. So, I did not know how he got there.

CHAIRPERSON: At that stage you already knew that he either was a service provider to PRASA or had some association of one kind or
20 another with PRASA?

MR MOLEFE: I think by that time I knew because I asked one of the Executive Members who was the executive for PRASA Technical Services Mr Zaki Zamxhaka. I was seeing them going around together and I said but who is this guy then he tells me who is he.

CHAIRPERSON: That was Mr Moodley?

MR MOLEFE: Yes. Then I said to him it looks like if you say to me he is a service provider to PRASA you might be compromised and you might also compromise him because if you behave in a manner as if you like it your tongue and saliva when he gets a contract from the company somebody is going to say what do you expect he has got all of them in his pocket, so I said no, let us find a way of ...(intervenes).

CHAIRPERSON: Getting out of ...(intervenes).

MR MOLEFE: Getting out of this closeness. I cannot say do not talk to him, it cannot be like when a person sees you they cannot make out
10 their minds whether this one is just a businessperson or an executive manager of the company. So that was that and I must say that it did not end there at a later stage I did say to Mr Moodley I see you being too close to the management of the company, I do not think it is too good for you, I think keep your distance because you do not want suspicions about the company when you know, procurement is done, tenders are issued because you might be winning some of them.

ADV VAS SONI SC: Now, you cautioned some managers and you cautioned Mr Moodley where those cautionary signs comply with in other words did this closeness stop?

20 **MR MOLEFE:** Well Chairperson I was not a day to day operator an Executive of the Board so I do not know, I have given my advice and by the way whether my advice is heeded is simply dependent on those who listened to it because even if I say I saw you walking around in the premises of the company they can still do it outside the premises of the company. So I do not know if they complied with my request.

ADV VAS SONI SC: And what was your observation?

MR MOLEFE: Well my sense is that they continued to – that he Mr Moodley continued to be close ...(intervenes).

CHAIRPERSON: To have a strong presence at PRASA.

MR MOLEFE: He continued to do so and also of course he had – it appeared at that time he had been very close to the Group CEO at the time as well, because at one point I was told by the Group CEO because they knew that I loved golf that he had sponsored on behalf of PRASA the golf event of Mr Moodley which was going to happen
10 somewhere in Durban and that – he suggested that I attend and Mr Moodley also invited me. I do not want to go into those details. I will wait to hear counsel lead me. But I can go on with this story until I go.

CHAIRPERSON: Ja. He will lead you on that at the right time. But I just want to share this with you. A few minutes ago, you described- well maybe you did not describe but you refer to a tongue and saliva. No, all I want to say is that in my language isiZulu it is a very descriptive way a very good way to describe a certain relationship. So, if people seem to be really very close, that is how we put it. So maybe my Zulu meaning for it, it makes it quite clear what you were objecting
20 to. So, I thought I will share with you because after you mentioned it, it was lingering in my mind.

MR MOLEFE: Thank you Chairperson but perhaps now that the Chairperson has explained it in English as well.

CHAIRPERSON: Yes.

MR MOLEFE: That English import should be recorded ...(intervenes).

CHAIRPERSON: Yes.

MR MOLEFE: Next to what I have said for anyone who might not understand what tongue and saliva means.

CHAIRPERSON: Understand, yes. But I was also wondering whether in your language which I do not understand to be isiZulu whether you have something similar. This is just an aside now in whether that you have a similar kind of description or not really?

MR MOLEFE: There is a similar ...(intervenes).

CHAIRPERSON: There is a similar, *ja* okay.

10 **MR MOLEFE:** Also an understanding of a relationship where – which is interdependent.

CHAIRPERSON: Yes.

MR MOLEFE: One does not exist without the other.

CHAIRPERSON: Without the other, yes. Thank you.

ADV VAS SONI SC: Among some employees, what was – how was Mr Moodley referred to? What was his reputation in regard to PRASA and his influence in PRASA?

20 **MR MOLEFE:** Well later on Chairperson I asked employees especially those with whom I had the opportunity to converse and one of them said, “Look, this is Mr PRASA. This gentleman here he is called Mr Moodley, he owns PRASA”. Another one says, “PRASA is his farm”. So, it is a farm, you have this farm. From time to time if it is harvesting time you come to harvest. So that is how they put it.

So, for the first time one begins to realise some of the critical challenges that those running the State-Owned Companies and who are

intent on ensuring prudence and good corporate governance we are facing.

ADV VAS SONI SC: Now were you aware that any of his companies had received contracts from PRASA?

MR MOLEFE: I was advised Chairperson that – and it is when I asked what service does he provide. To what he said no, he has got Royal Security company. A security company called Royal Security. And he had another business called Strawberry Worx which was run by his son. In respect of Royal Security is obviously to provide security at different
10 in stations ...(intervenes).

CHAIRPERSON: Train stations.

MR MOLEFE: Or assets at stations of PRASA. Strawberry Worx, I was advised that it had been awarded a contract and the terms to advertise everywhere where PRASA had property especially at the stations. And that the terms of that arrangement were that 60% of the profit proceeds of advertisement will go to PRASA, 40% will go to Mr Moodley's company, Strawberry Worx.

And then I asked a question, is it happening? Are we making money out of it? Is it complaint? He said, "no, he has stopped paying
20 to PRASA its 60%. He is not paying it". And I think around that point then a dispute arose between PRASA and him – and Strawberry Worx. Let me put it that way.

CHAIRPERSON: Did you get to know about how long it had been advertising at the properties owned by PRASA?

MR MOLEFE: In all fairness I never got to probe that deeper.

CHAIRPERSON: You never got to probe, yes.

MR MOLEFE: But generally talking about the relationship between PRASA and Mr Moodley I was advised it is an old relationship. In fact, it did not start only when PRASA was unbundled from what is now Transnet and its entities. That he started there at what is today called Transnet.

CHAIRPERSON: H'mm.

MR MOLEFE: Ja. And continued to follow.

CHAIRPERSON: Yes,

10 **MR MOLEFE:** Those who were operating Metrorail who had become part of PRASA.

CHAIRPERSON: H'mm okay.

ADV VAS SONI SC: Now can I just ask you and I ask you because this is what I said yesterday is the evidence that is going to be led on this issue. Did you know that until yesterday that an amount of 471 million Rand paid by PRASA to Royal Security for services they purportedly rendered?

MR MOLEFE: I did not know independently but I would – if it was part of the investigations of the Werksmans it would be in their report of
20 Werksmans. But I have heard other witnesses saying it. I did not know.

ADV VAS SONI SC: You also know that Royal Security had between 2007 and 2009 paid Mr Zuma an amount of 1.5 million Rand in monthly instalments of about R64 000.00.

MR MOLEFE: Well Chairperson I independently I did not know but it

became a matter of public record because it was reported extensively here in the media and I am not sure if Public Protector's report eluded to it but it was in the media extensively. And of course, I have no recollection of Mr Zuma challenging that allegation. He was I suppose because it was in the record and it can be proven.

ADV VAS SONI SC: Just on that score, what – you do come to a stage where you say Mr Moodley invited you to the 2015 July Handicap and told you that Mr Zuma and Minister Radebe were going to be there. You remember – we will come to that in a moment but you recall that
10 part of your affidavit?

MR MOLEFE: I did Chair. But maybe before we move away, we should take this example of an owner of a small company putting the President of the country on his payroll as a confirmation of the statement I made about how those intent on State Capture, their *modus operandi*. You pick a key decisionmaker, very influential people and they will do your bidding for you. This is just the right example of that.

ADV VAS SONI SC: Ja, thank you for pointing that out Mr Molefe. That is another piece in the puzzle obviously. But the question I want to ask is what from your observations was the relationship between Mr
20 Moodley and Mr Zuma aside from these transactions that we have talked about?

MR MOLEFE: Initially Chairperson I knew nothing about his relationships with the former President Zuma save what he told me. He told me that when he has functions, two major ones, the July Horse Racing and I understand Mr Moodley has got a number of horses. He is

an owner of racing horses. So, there he invited the President of the time from time to time.

The second one was this golf event to which he was inviting me. There on the day when there is a Gala dinner with prize giving, he would invite President Zuma to that. The third instance was on the occasion of the State of the Nation Address, Mr Moodley was one of the very important people invited. I must say that regardless of my struggle credentials I was no longer being invited to those events. In fact, he was the one who would then ...(intervenes).

10 **CHAIRPERSON:** Who invited you.

MR MOLEFE: Mr Moodley will be the one to say, "Are you going there?" And I say, "No, I have not been invited". He will say, "Look, I will get you ...(intervenes).

CHAIRPERSON: An invite.

MR MOLEFE: And invitation. So, I said, "I do not want you to go and ask for an invitation for me". The fact that they did not invite me is that they do not want me to be invited and I will rather wait for the invitation to come from them.

CHAIRPERSON: H'mm.

20 **MR MOLEFE:** So, these are instances which are really indicated that that relationship and in his view he was getting these invitations from the President.

CHAIRPERSON: Now the State of the Nation Address to which you referred, do you remember whether which year that was?

MR MOLEFE: The first time I noticed it would have been in

...(intervenes).

CHAIRPERSON: 2016.

MR MOLEFE: 2016.

CHAIRPERSON: Okay.

MR MOLEFE: In 2016.

CHAIRPERSON: And was it one occasion in terms of the State of the National Address or was it more than that?

MR MOLEFE: Because I was not attending all of them ...(intervenes).

CHAIRPERSON: Yes.

10 **MR MOLEFE:** It could be that in 2017 again a similar thing happened.

CHAIRPERSON: Yes.

MR MOLEFE: Because we were – the hotel where I was staying Mr Moodley would also be staying in the same hotel. So, he was getting regular invitations.

CHAIRPERSON: H'mm. Now you spoke about him, that is Mr Moodley, inviting the former President to his golfing function. Is that right, in Durban?

MR MOLEFE: I did say so Chairperson but I did also say I had no independent knowledge of that because I never attended those events.

20 **CHAIRPERSON:** Oh yes.

MR MOLEFE: But I was told by him.

CHAIRPERSON: By him, yes.

MR MOLEFE: Mr Moodley, ja.

CHAIRPERSON: Okay. And what he told you was that he would invite the former President to some of those functions.

MR MOLEFE: Yes, and he would say, “Come the President will be there. Come to the dinner, he will be there”. And he would sometimes say, “Well Minister Jeff Radebe will be there”. And refer to other ...(intervenes).

CHAIRPERSON: Yes.

MR MOLEFE: Ministers that he normally invited.

CHAIRPERSON: Yes.

MR MOLEFE: Maybe even the former Premier of KwaZulu-Natal who then become the Treasurer General of the ANC, Mr Zweli Mkhize.

10 **CHAIRPERSON:** H'mm.

MR MOLEFE: Doctor, sorry. Dr Mkhize.

CHAIRPERSON: Now going back to Mr Moodley attending the State of the Nation Address and offering to in effect as I understand your evidence organise an invitation for you. Is he the one who said to you he had been invited to the State of the Nation Address, did he say by the former President? Or do you know how he – who had invited him? I mean technically the initiation would come from the Speaker of Parliament, I would imagine. But I wonder whether you are able to clarify that?

20 **MR MOLEFE:** Well he said he is getting invited by the Presidency but the way when I was still a politician, the way this matter would work is that the Speaker of Parliament would allocate individuals – to individuals an invitation. For the Presidency there are so many invitations and somebody in the Presidency would then invite people who are close to the President.

CHAIRPERSON: Yes.

MR MOLEFE: There would be those individuals who are like your Head of State and so on ...(intervenes).

CHAIRPERSON: State Entities.

MR MOLEFE: And then those would probably be invited directly or the President would say, I want you to invite those people. And then they would invite them.

CHAIRPERSON: H'mm.

MR MOLEFE: Especially Heads of Government because it needs to
10 have that decorum of the highest office in the Legislature they are inviting. And the same applies to every Member of Parliament. They invite their friends and families.

CHAIRPERSON: Yes. Okay, thank you.

ADV VAS SONI SC: Thank you Chairperson. Mr Molefe, before I leave this and perhaps, I was not as vigilant as I should have been. You mentioned a prize giving occasion, what was that?

MR MOLEFE: Chairperson when you play golf – when golf was played, they keep the scores and at the end of the game those scores are kept in the order of the performance of the golfers depending on how many
20 prizes they have. They could have – they could give out five prizes or 10 prizes but they would give them in different ways. There could be a golfer with what is called the longest drive, he hits or she hits the ball much longer than anyone else, further than anyone else and then get a prize for that.

ADV VAS SONI SC: So ...(intervenes).

MR MOLEFE: And then others would be depending on the format, if it is what they call the better ball, a better ball means there should be two parties. The better of the two. And a better ball would have two golfers on one side the other two on one side and the better ball winners will be the two on the best performing side.

ADV VAS SONI SC: The question I am asking is in answer to the question from the Chairperson you referred to a prize giving ceremony. What prize giving ceremony were you referring to?

MR MOLEFE: I was referring to the prize giving ceremony of the golf event which was organised by Mr Moodley which I was advised by Mr Montana that he had sponsored as the GCEO of PRASA and was encouraging me to attend. So, I did not attend but Mr Moodley also inviting me he said, "Come and the President will be there. He will be at the prize giving". Because at the prize giving you also have some kind of a Gala dinner. So that is what it means.

ADV VAS SONI SC: Sorry ...(indistinct).

MR MOLEFE: And prize giving by the way I do not know if they would give money anywhere but they normally give you a golf clubs, maybe one driver. A driver is a wood, a number one wood. Or a sand wedge, the one that you use to chip the ball out of the sand in the bunker and so on. Or a putter, the one that you use to put the ball into the hole. I do not know if the Chairperson played golf at all.

CHAIRPERSON: No, he is not. But he hopes to be one after retirement. Were there a few occasions when Mr Moodley invited you to some of these events that he was sponsoring or organising or just

once or twice?

MR MOLEFE: It might well have been twice but I remember one ...*(intervenes)*.

CHAIRPERSON: Yes.

MR MOLEFE: Of course, I then in between things changed that also made me to be cautious.

CHAIRPERSON: Okay.

MR MOLEFE: *Ja* of by association, *ja*.

CHAIRPERSON: Okay, thank you.

10 **ADV VAS SONI SC:** now the other point you – is that the same tournament that PRASA had sponsored?

MR MOLEFE: That is correct.

ADV VAS SONI SC: And what was the sponsorship?

MR MOLEFE: I do not know what the sponsorship was. Ordinarily the Board would not concern itself with the small things. I mean they sponsor charity I mean the Board would not want to know about that. But I think in time we began to ask corporate communication of PRASA where apparently sponsorship was being directed from to give to the Board the sponsorship policy of the company.

20 We were beginning to see some strange parties who we were told we were giving money they were given like 5 million per annum. And they served no good social cause and so that is what made us to want to now get the policy to understand what is it that we may or may not sponsor. But that was not the only one that caused us to do so Chairperson.

PRASA for a long time or for some time became an anchor – one of the anchor sponsors of the Cape Town Jazz Festival. Of course, for which it had got certain benefits but it also supplied free trains to people from certain parts of the province. And it turned out that that sponsorship was done in a manner that we thought was prejudicial to PRASA and we wanted it reviewed. First, we had been committed to several years and that too made us want to understand the sponsorship policy.

ADV VAS SONI SC: Now you have described two of the occasions on
10 which you listed paragraphs 37 and 38 where Mr Moodley you say tried to capture you, the one being the golf day and an invitation to the July Handicap. Do you see that?

MR MOLEFE: I see that Chair.

ADV VAS SONI SC: Now there is a third one that you mentioned but before I ask you about the third one, there are news reports that then President Zuma made R15 000.00 at a Durban July. Is this the Durban July where you – that report refers to?

MR MOLEFE: Chairperson I would not put my head on the block for that safe to say that it was at one of those fairly recent Durban July
20 Handicap just before I left PRASA.

ADV VAS SONI SC: Now the third occasion you talk about is the trip you were planning to attend the US Masters in Augusta Atlantic in the United States.

MR MOLEFE: Yes, I do Chairperson.

ADV VAS SONI SC: Can I ask you very briefly, I know it is quite

detailed here. Could you briefly explain to the Chairperson what are various indicia that this was a further attempt by Mr Moodley to capture you.

MR MOLEFE: Chairperson in the – in my statement I explain what they – the Masters is a Global Golf Competition. Mr Moodley had overheard me talking about the fact that I was going to go to the Masters. He then asked me ...(intervenes).

CHAIRPERSON: Maybe – I am sorry. Maybe you can lower the mic a little towards your direction because I think you now speaking – *ja*.

10 **MR MOLEFE:** The – having heard me saying that I am planning to go to the Masters he said he would want to come along. Him and his Spanish friend or business partner, the one I said whose surname I cannot remember but now I remember it is Michael Forstam. The two of them wanted to come, I said, “that is fine. You can come with me. I do with many people, there is no big deal”. *Ja* and I explained what it is entailed to it entails to go to the Masters acquiring the badges, the badges are normally what is called accreditation or a offer access badges or ticket and then of course your accommodation apart from your air ticket and so on. So, we explained that. Then Mr Moodley
20 says, “Do nothing. I will bear the cost for everything. Your air ticket, your accommodation, your transfers, your subsistence when you are there. And you tell me how much the badges will cost and I will pay for that”.

So, I said, “No, that is not how I do it. I will not do that”. And then I decided instead of waiting longer I am just going to go ahead,

book accommodation, pay for the badges, I will pay for his as well. I paid for his badges as well and I have said I have done all of those things. I have got my air ticket and I am going with my wife. So, and we have got a house where we are staying. That is what I had told him. But it turned out that after I had said to him, I was happy for him to join me going to the Masters, I had done it for many people I knew without any condition attached. Then I got a report – counsel will stop me if counsel wants me not to proceed in that manner.

ADV VAS SONI SC: *Ja.*

- 10 **MR MOLEFE:** Counsel I get a report from a former colleague who worked with me at Petro SA, the Petroleum and Gas Corporation of South Africa of which I was the Chairman at some point. He says to me, “I am consulting for this particular and we were in Spain. I had a meeting of the Board with these people because I needed to present to them a proposal for the work that I am doing for them. In that meeting Mr Moodley then asked several of these people to give him money because he needed that money to pay for the air tickets, business or first class tickets for the Chairman of PRASA, to pay for his accommodation for a week. To pay for the children air tickets of the
- 20 Chairman and to give them money for subsistence as well as ensuring that they have got transfers from the airport back to the airport and from where they live to Augusta National which is where the event is held. So this guy tells me this. When I had heard that I got scared. In fact this is what made me pay for everything quickly. I can say that now that I did not claim the monies I paid for Mr Moodley because I

began to worry that I did not really want to have exchanges of monies with him. I recommended that he books his air ticket, that he books his own accommodation. He said he had booked accommodation but he wanted me to stay with him all the time and I said, no we do not – I do not want to stay with you I have got my house where I have got other people. And Chairperson that is the house that I have been staying in for years. I mean the family knows me. I just tell them I am coming, give me your price and I pay them. That is where I stayed all the time. So – and then he used to insist that I should ask the other people who

10 would be staying with me to vacate their bedrooms, their rooms so that him and Michael Forstam would come and stay with me in that house. I refused of course. So that is where we are now. And as things goes on then of course it is also at that time when there is this orchestrated volatilities, protests that are being orchestrated now by those who were associated with Mr Montana, Sithau and this other man who was being paid R5 million every year he is called Stephen Sangwan organising unemployed youth to come and demonstrate and march against the Board at PRASA. So I said to him, look I have an emergency I cannot go now. I am not going to the Masters anymore I have got to deal with

20 an emergency back of – here at home but my wife will go. I have invited our friends from Atlanta in the United States. They will be staying in the same house with my wife. You and Michael can proceed. I will give you the details of where you will collect your badges to enter Augusta National. Hearing me saying that I was not going he say, no if you are not going I am also cancelling. And I must say that actually

before I told him that I was not going he was beginning to suggest that during our trip to the United States we must talk about the business we can do together. And I said, no I do not want to discuss business. It is a golf thing and that is what it is going to be I do not want to talk business. So the effect of what I said was that he cancelled. Having attended to my ...(intervenes).

CHAIRPERSON: He cancelled his own bookings?

MR MOLEFE: For his trip. He had not – I do not know.

CHAIRPERSON: Oh.

10 **MR MOLEFE:** Well he would have cancelled his ...(intervenes).

CHAIRPERSON: He changed his mind about attending.

MR MOLEFE: Changing he minds I do not know if he had booked.

CHAIRPERSON: Yes.

MR MOLEFE: But I had booked badges for him.

CHAIRPERSON: Yes.

MR MOLEFE: Which in any event would still have been in the United States. I paid for them and they would be given to friends who came there. So I got worried about what appeared to be a concerted attempt to compromise me. Worry me even more was that companies whose
20 relationship with PRASA I did not know were told that they needed to pay money to enable me to go to the Masters. I mean I did not need anybody for pay me. I had been doing it. By that time I think I had been doing it for 10 years or so. So that is what – and Chairperson again it is important to situate what I am saying within that which I said is the *modus operandi* of those intent on capturing people how they

target decision makers, people in influential positions. But they also manipulate and compromise you.

CHAIRPERSON: Would it be correct to say in the end it looked like he had never intended to go and attend this function until he heard that you were planning to attend and then he said he wanted to go as well. But when you said you were not going to go he then changed his mind also and said he was not going. Is that a fair?

MR MOLEFE: It is a fair conclusion Chairperson.

CHAIRPERSON: Yes conclusion.

10 **MR MOLEFE:** I doubt.

CHAIRPERSON: Yes.

MR MOLEFE: If he even knew about the Masters.

CHAIRPERSON: Yes, yes. Thank you.

ADV VAS SONI SC: Just on that score Mr Molefe you say that one of things he said to you is while you were in the United States you could – he would – you and he could discuss business. Did he indicate what that would be?

MR MOLEFE: No, no I did not even want to entertain that discussion because I cannot entertain a discussion of doing business with
20 somebody who is doing business with a company that I am the Chairman of. Clearly I mean there would have been conflicts right from the beginning. So conflict of interest so I did not entertain it. I was not interested in taking the discussion further than what he said and what I said to him that I – no, I do not want to discuss business.

CHAIRPERSON: To the extent that he may not have intended to or

plan to attend the Masters prior to him hearing that you were planning to go there am I right to say certainly you were not his friend?

MR MOLEFE: Certainly he had no intention of going there.

CHAIRPERSON: Yes, yes.

MR MOLEFE: But what was quite clear.

CHAIRPERSON: Yes.

MR MOLEFE: Is that he was looking for an opportunity where he could be with me, far away and in circumstances in which he would have financed everything so I – we would proceed from day 1 on the basis of
10 one who has been compromised.

CHAIRPERSON: H'mm.

MR MOLEFE: Ja.

CHAIRPERSON: H'mm. You were not friends at the time that he – when he said that you wanted to go – you were going to attend the Masters he then said he was also going to

MR MOLEFE: Yes, yes.

CHAIRPERSON: And he wanted to stay where you were staying.

MR MOLEFE: That is correct.

CHAIRPERSON: To the extent of him saying ask the other people that
20 would have been guests in the house which you were going to – in which you were going to stay ask them to leave so that he can come in and stay with you?

MR MOLEFE: That was his view.

CHAIRPERSON: H'mm.

MR MOLEFE: His request.

CHAIRPERSON: H'mm. Thank you.

ADV VAS SONI SC: Mr Molefe there is just one further aspect and then I am going to turn to a different aspect of your affidavit. You hear from a friend that look Mr Moodley is going around in faraway Spain to say I am going to sponsor Mr Molefe and his family to the Masters. Obviously that is a slur on your character. Would I be correct?

MR MOLEFE: That is correct.

ADV VAS SONI SC: Is that simply how you regarded it?

MR MOLEFE: Chairperson.

10 **ADV VAS SONI SC:** Did you raise it with him at any stage?

MR MOLEFE: No I did not go and have any further discussion with him. My recollection is that at one point you know as the other witnesses say that he is a powerful man. He – I run a charitable foundation to raise funds to educate young people whose parents are unable to pay for in respect of their tuition and books. So I do it every year. I raise funds and I hold this event at Sun City. So that same year I think shortly after I said I cannot go with him to the Masters he comes to my event with Mr Michael Forstam no they want to play. And so I say no.

20 **CHAIRPERSON:** They want to pay?

MR MOLEFE: They want to play golf in my event.

CHAIRPERSON: To play golf *ja*.

MR MOLEFE: So I said you are not going to play because I have not invited you and do not try to go to the dinner either because you will be embarrassed. Because everyone who is going there is accredited. So I

sent them away. So there was no further basis for future discussion safe where it appeared and maybe I should leave this one. But quite clearly being unhappy with the – what I was doing and also ...(intervenes).

CHAIRPERSON: Do not go far away from the microphone.

MR MOLEFE: Oh sorry Chairman.

CHAIRPERSON: Ja. Yes.

MR MOLEFE: So it became clear to me that there is no love lost between me and Mr Moodley and if anything he would support any
10 opportunity to undermine my work and the work of the Board of Directors of Trans – of PRASA.

CHAIRPERSON: Let me ask, are you able to remember around about when and in which year the Masters was to which Mr Moodley wanted to go?

MR MOLEFE: I would not ...(intervenes).

CHAIRPERSON: It is ...(indistinct).

MR MOLEFE: I would not be able to give the exact date.

CHAIRPERSON: Yes.

MR MOLEFE: Safe to say the Masters Event takes place the first week
20 – that time it was taking place – let me say the second week of April. Normally a week that starts say maybe on the 6th or the 5th and it is a five day event.

CHAIRPERSON: Yes.

MR MOLEFE: Which end on Sunday evening.

CHAIRPERSON: H'mm. Would this have been 2015/2016?

MR MOLEFE: 2015.

CHAIRPERSON: 2015.

MR MOLEFE: 2015.

CHAIRPERSON: Okay and then the function that you were hosting golf and – at Sun City that he wanted to attend:

MR MOLEFE: It also happened every April.

CHAIRPERSON: Yes.

MR MOLEFE: But just after my birthday which is on the 26th April – towards the end of April.

10 **CHAIRPERSON:** Yes.

MR MOLEFE: It was a two day event.

CHAIRPERSON: And this particular one that he wanted to attend or where he rocked up was it in 2015 or 2016? The – your golf event which you host in Sun City. The one that Mr Moodley wanted to attend was it is 2015 or 2016?

MR MOLEFE: It was 2015.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: So it was about the Masters and your golf event were in April 2015?

20 **MR MOLEFE:** In 2015 same month.

CHAIRPERSON: So April is a big month for you. It is the Masters, it is your golf event, it is your birthday, it is Freedom Day.

MR MOLEFE: It is a big day but I have stopped now going to the Masters I can no longer afford it. Maybe this should have been the time when I invited Mr Moodley now to take over.

CHAIRPERSON: Well actually I wanted to ask you a question and you did say that prior to 2015 you may have been attending the Masters for about 10 years or so. You had been attending the event a number of times. In terms of – are you able to give an indication of what it would have cost Mr Moodley to attend such an event that maybe he might never have attended before that he might really not have been interested in except for the fact that you were going there – to go there and be there for five days and come back. Is that something easy to indicate what kind of cost that would have entailed in terms of amount?

10 **MR MOLEFE:** Part of the costs I would have told him. Because the way we plan it we normally deal with accommodation, what accommodation is going to cost if you rent a house. Hotels are just too expensive so I would – I have never stayed in a hotel. I ask families for that week.

CHAIRPERSON: Yes.

MR MOLEFE: To leave their house.

CHAIRPERSON: Yes.

MR MOLEFE: I stay there I leave it in the manner in which I found it.

CHAIRPERSON: Yes.

20 **MR MOLEFE:** And I come back from holiday.

CHAIRPERSON: Yes.

MR MOLEFE: The – if he was going to fly business class.

CHAIRPERSON: H'mm.

MR MOLEFE: He would have had to pay in the region of R86 000.00. If he wanted first class it would have been more.

CHAIRPERSON: H'mm.

MR MOLEFE: And for the badges for the Masters that time because it had not become very expensive at the time for the Masters badges he would have had to spend approximately R150 000.00. If he had wanted to add – and that is four days of – but if he had wanted to add Monday, Tuesday, Wednesday he would most probably have paid an additional R3 000.00 – so additional R12 000.00. And then of course he would have had to deal with the transfers from the airport and back to the airport. And he would have had to also pay for his accommodation. I
10 think at that time you could get accommodation at 1 800 US Dollars per night at the time. If you were using the hotel accommodation.

CHAIRPERSON: The hotel.

MR MOLEFE: But if you were using a house the ballpark figure would have been 6 500.00 and normally we choose a four bedroom house and we divide that amount by four which gave us something like say 1 something like 1 260.00 or so.

CHAIRPERSON: 1 000 something.

MR MOLEFE: Ja 1 000 something Dollars.

CHAIRPERSON: Ja.

20 **MR MOLEFE:** Ja.

ADV VAS SONI SC: So this

CHAIRPERSON: So what is ...(intervenes).

ADV VAS SONI SC: I am so sorry.

CHAIRPERSON: Yes. At roughly does that mean he may have to spend no less than what R150 000.00 or is it more? I just want to have

an idea.

MR MOLEFE: It was more. If we were to go according to his plan.

CHAIRPERSON: H'mm. H'mm.

MR MOLEFE: He would have spent more than a million and a half or probably 2 million.

CHAIRPERSON: Is that so?

MR MOLEFE: If he included himself, his friends.

CHAIRPERSON: Yes.

MR MOLEFE: Me, my wife.

10 **CHAIRPERSON:** Yes.

MR MOLEFE: And he said children. I do not know which children he was talking about.

CHAIRPERSON: Yes.

MR MOLEFE: And then all these other things and he says he was – he would provide subsistence. So you talking in the region of ...(intervenes).

CHAIRPERSON: Not less than a million.

20 **MR MOLEFE:** 2 million but himself alone it would have cost him – it would have cost him just for accommodation and the badges it would have – him alone it would have cost him in the region of 300 000.00 and it is so because he was choosing an accommodation that would have been expensive.

CHAIRPERSON: H'mm. Okay. Thank you. Thank you.

ADV VAS SONI SC: So that would have been R300 000.00 per person.

MR MOLEFE: Yes. And that does not include air tickets.

ADV VAS SONI SC: Sorry?

MR MOLEFE: It does not include air tickets.

ADV VAS SONI SC: He – oh without air tickets.

MR MOLEFE: Ja. Without air tickets.

ADV VAS SONI SC: And that would therefore be another 100 –
86 000?

MR MOLEFE: You would have had to add another 86 000 per person.

CHAIRPERSON: Yes.

MR MOLEFE: And depending on the numbers of course it would
10 balloon.

CHAIRPERSON: Yes. I see Mr Soni we have gone beyond 16:00.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I think we were unaware. We are at twenty past.
Maybe we could go up to half past.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Is that fine Mr Molefe?

MR MOLEFE: It is fine Chairperson.

CHAIRPERSON: Yes maybe let us go to half past.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** And then we adjourn for the day.

ADV VAS SONI SC: Now – one of the contracts that you noted that I
had mentioned before we started talking about Moodley – Mr Moodley
was the Siyangena Contact Mr Molefe.

MR MOLEFE: That is correct Chairperson.

ADV VAS SONI SC: The Sifambo I am going to deal with a little later.

I just want to deal with one small aspect of that now. What from your understanding of the relationships did Mr Moodley have to do with the Siyangena – Mr Moodley or his companies have to do with the Siyangena Contracts?

MR MOLEFE: The – these matters Chairperson became that relationship issue became apparent after we had conducted investigations on a number of contracts which included this particular one. And in this one it was clear that he had an association – an associate let me not call it interest – association with Siyangena. And
10 the investigations of course begging the indulgence of counsel that are arising out of that contract and as borne by the investigations a sum of R500 million was paid to Mr Moodley for no work done for PRASA. For him not being a shareholder either of Siyangena.

ADV VAS SONI SC: Now your knowledge of the Siyangena Contract arises from the fact that PRASA had brought an application to set aside that contract. Would I be correct?

MR MOLEFE: It is correct Chairperson.

ADV VAS SONI SC: And what was your position in PRASA at the time that application was made?

20 **MR MOLEFE:** At the time when that application was brought up I think I was still the Chairman of the Board.

ADV VAS SONI SC: Chairperson yes.

MR MOLEFE: But of course shortly thereafter I – my term ended.

ADV VAS SONI SC: And in regard to ...(intervenes).

MR MOLEFE: No – I was not Chairman of the Board Chairperson

because I remember very well the debate in court where the court dismissed our application. It was based on the Paga Rule of 100 days.

ADV VAS SONI SC: 180 days.

MR MOLEFE: And then of course the court was saying you – PRASA you should have brought this application much earlier than today. Of course the court was looking at us as an organisation – as an institution. It was not saying the Chairman of the Board joined later and the Chairman of the Board became aware only after investigations had been conducted. The Chairman – the court says you are PRASA. You

10 have had your own Management.

ADV VAS SONI SC: Yes.

MR MOLEFE: You should have done it ...(intervenes).

CHAIRPERSON: Much earlier.

MR MOLEFE: Much earlier and of course the Judge was not interested in looking at the merits of the case so it was dismissed.

CHAIRPERSON: H'mm.

MR MOLEFE: I think I am advised that to PRASA went back to ask for an appeal of that judgment.

CHAIRPERSON: H'mm.

20 **ADV VAS SONI SC:** Mr Chairperson because it is a legal issue may I just put it at the risk of being accused of giving evidence. What had happened is the High Court ruled that PAGA applied even when there is a self-review by an organ of state. Of course in the Gagama Matter your court Mr Chairman the Constitutional Court then said that Paga does not apply in self-review matters the principle – the self-review is

brought on the basis of the principle of legality and therefore the 180 day rule does not apply. And therefore after the Gagama Judgment PRASA went back to court with a new application to re-seek the same relief that had been rejected by the court then and that is the matter.

CHAIRPERSON: *Ja.*

ADV VAS SONI SC: That is now before the court. But Ms Ngoye will give evidence about that.

CHAIRPERSON: Okay.

ADV VAS SONI SC: So I thought I would just complete that part of the
10 ...(indistinct).

CHAIRPERSON: Okay. Yes okay.

ADV VAS SONI SC: Now what is the matters that you – well some of the matters that you dealt with Mr Molefe when you were saying there were disruptions and that is why you indicated to Mr Moodley that you were not going to go to Augusta. You remember you said that? There were – the disruptions at PRASA.

MR MOLEFE: I am saying that the reason I gave him was that I had that emergency arising out of those disruptions. But I must also say that that reason was given within the context of me having become
20 aware of what he had been doing to try and secure money in my name and my family.

ADV VAS SONI SC: But I want to quickly with it for the next couple of minutes so we can finish this issue. If you look at paragraph 47.1 to 47.6 are those the matters that in general you were referring as creating disruptions around that time?

MR MOLEFE: That is correct Chairperson. These are the matters which were create in that climate for disruption. And I am aware that whilst he relayed directly to the conduct – well if there – I am aware that they relate also to the conduct of the then Group CEO nevertheless they – I am now taking the responsibility of Counsel where I do not think they are germane to State Capture per se but they merely show that this is what was being fermented at the time to create instability. Probably if people were not really intimidated some of them would have come to say, we were actually advised in a teleconference with one of
10 the Ministers that we needed to keep the heat up so that Government can justify removing this Board. But in the absence of people with courage to say these things there is very little I can do about them.

ADV VAS SONI SC: So what you are saying Mr Molefe is this that around the time the Board was removed you were told and I know the people are not going to come and say this.

MR MOLEFE: Yes.

ADV VAS SONI SC: But you were told that the Government was putting on the heat on people – well I mean encouraging people to put the heat on the Board?

20 **MR MOLEFE:** Yes. So that they could justify removing the Board because to just come in and say go they could not. So you needed to create a climate and you say, this organisation is unstable, the Board is not operating properly. It does not enjoy the loyalty and allegiance of the employees and the Unions – remove them.

CHAIRPERSON: And you say from what you were told that a Cabinet

Minister was involved.

MR MOLEFE: I beg your pardon?

CHAIRPERSON: Are you saying from what you were told a Cabinet Minister was to be part?

MR MOLEFE: I was told so, and to be specific I was told that it was a teleconference with Mr Jeff Radebe, and I wish the individuals who were there in that discussion were willing to give that evidence because what it does it shows just how determined at a very high level, political level, people whose responsibility it was to run Government and ensure
10 that there is effective delivery of services to the poor people of this country were determined to remove those who wanted order in these institutions ...(intervenes)

CHAIRPERSON: H'mm.

MR MOLEFE: In these institutions and that of course one will see later on even the behaviour of Members of Parliament when we come to that later on.

CHAIRPERSON: Okay thank you.

ADV VAS SONI SC: Just on that score, and I am going to end on this note Mr Chairperson, if you look at paragraph 46.6 this is a document
20 that you say is indicative, this is the document PRASA in turmoil which is indicative of those attempts to put the heat on the Board.

MR MOLEFE: That is correct Chairperson, that is what I am saying.

CHAIRPERSON: Well Mr Soni whoever is watching or listening here doesn't know what you are talking about.

ADV VAS SONI SC: I beg your pardon, I am sorry. Mr Molefe in –

what is the issue you raised in paragraph 47.6, I am sorry I should have asked for those details first.

MR MOLEFE: The issue I am raising is that we have a Board Meeting and that meeting was in May of 2015, we expect Management led by Mr Montana to present a report – Management report, which in normal companies would reflect performance in accordance with the targets of Management, give a status of where we are with the ...(intervenes).

CHAIRPERSON: State of the company.

MR MOLEFE: The State of the company.

10 **CHAIRPERSON:** H'mm.

MR MOLEFE: But suddenly in that report there's this section that says PRASA is in turmoil, out of the blue and we get told by the Group CEO that PRASA is in turmoil. That day as he is telling the Board that PRASA is in turmoil he is privy to the arrangement of a march and a demonstration and ...(indistinct) that was to happen at the headquarters of PRASA of which we got wind a day or so before and we decided that we are not going to sit there and have the meeting of the Board disrupted so we're going to choose another venue, so we took the meeting to a different venue, because there were people holding placards, inciting the Chair of the Board and the Minister with lots of media coverage and Mr Montana says to me the marchers have asked that you must come and receive the memorandum, so I said I am not going there, I am not going to go there, we have a Board Meeting here you knew that this much was happening, you have been briefed about everything, you now go on behalf of the Board to receive that

20

memorandum and address those people.

So we had all of these kinds of activities that were happening and of course as that report was given, as PRASA in turmoil I had also found a much more detailed one which was leaked by the media and they got it from the office of Minister Jeff Radebe, a copy of which at the time I gave to Minister Dipau Peters to say look this is what is happening and this document comes from this office, has the Minister in the Presidency advised you of this. She had not heard about it until I gave it to her.

10 **ADV VAS SONI SC:** And she confirmed that to you, that she didn't have the document.

MR MOLEFE: She confirmed that she didn't have the document, then at the meeting convened by Mr Jeff Radebe – Minister Jeff Radebe on behalf of the President on or about the 20th of August Minister Peters pointedly asked Minister Radebe you have this kind of document, it deals with matters that pertains to the State Owned Company that reports to me, why are you not sharing that document with me, I need that document. Of course Mr Radebe denied that he had the document, he says no, he didn't have it, but I would imagine part of that
20 discussion is for later on in the evidence.

CHAIRPERSON: Yes, we need to stop now, it is beyond 16:30, but after I had read your affidavit I mentioned to – I asked Mr Soni whether we do have a copy of that document and I understood that attempts to try and get a copy had not been successful, I am hoping that at some stage we will get it, so I just mentioned that because it might be

important.

MR MOLEFE: Yes it is true that attempts to find it were unsuccessful but we do have a document that refers briefly to the section in the report of the Group CEO that said PRASA was in turmoil.

CHAIRPERSON: Oh, okay.

MR MOLEFE: But it is a separate document, I am sure we can find that one.

CHAIRPERSON: Oh, is it a document that should be here already in the bundle or not?

10 **ADV VAS SONI SC:** It is not yet in the bundle.

CHAIRPERSON: But attempts will be made to let us see whatever we can see in terms of whatever was referred to or quoted, *ja*.

ADV VAS SONI SC: Chairperson just for your information we have decided to ask Mr Montana, who appears to have been the author of the document for a copy of the document. He has been cited in the 3.2 Notices and there is no reason we can't formally ask him for that document.

CHAIRPERSON: Yes, no that's fine, but obviously I don't know what other attempts were made but every attempt should be made to get a
20 copy of that document because it might throw light on certain issues.

ADV VAS SONI SC: Indeed Chair.

CHAIRPERSON: That we have to look into. Okay, we are going to adjourn for the day, it is 16:40 and we will resume at normal time tomorrow at 10:00.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 13 MARCH 2020

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TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE
CAPTURE
HELD AT
BRAAMFONTEIN CHAMBERS

DATE HELD : 2020-03-12

DAY: : 222

TRANSCRIBERS : B KLINE; M NETTA; D STANIFORTH;
B DODD; D BONTHUYS

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