

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

13 AUGUST 2019

DAY 143

20

PROCEEDINGS COMMENCE ON 13 AUGUST 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning DCJ.

CHAIRPERSON: Yes we are supposed to deal with Ms Jiba's application for Leave to Cross-examine Mr Agrizzi?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Are you ready?

ADV PAUL JOSEPH PRETORIUS SC: Both parties are represented and perhaps the order should be the applicant representatives, the
10 respondent and then I will make some comments at the end.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Thank you.

CHAIRPERSON: We should be quite quick.

ADV ZOLA MAJAVU: Good morning Chair.

CHAIRPERSON: Good morning.

ADV ZOLA MAJAVU: I confirm my appearance on behalf of Advocate Jiba. The name is Z Majavu spelt M-a-j-a-v-u for the record and I am assisted [intervention].

CHAIRPERSON: Thank you Mr Majavu I think your voice is very soft
20 you might wish to raise it

ADV ZOLA MAJAVU: Let me try again.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: Chair. I confirm my appearance on Advocate – on behalf of Advocate Jiba. My name is Zola Majavu spelt M-a-j-a-v-u for the record and I am assisted by my associated Ms Makuta surname

spelt M-a-k-u-t-a.

CHAIRPERSON: Thank you very much.

ADV ZOLA MAJAVU: As it pleases the Chair.

CHAIRPERSON: Is there another appearance?

ADV JULIE ANN HOWARD: Good morning Chair.

CHAIRPERSON: Good morning.

ADV JULIE ANN HOWARD: I am Julie Ann Howard I confirm my appearance on behalf of Mr Agrizzi in this matter.

CHAIRPERSON: Thank you very much.

10 ADV JULIE ANN HOWARD: Thank you.

CHAIRPERSON: Yes Mr Majavu.

ADV ZOLA MAJAVU: Thank you Chair. Might I request the Chair's liberty to indulge us rather to hand up a bundle which I have prepared for ease of reference? I have already shared it with my learned friends on behalf of the evidence leaders as well as Mr Agrizzi.

CHAIRPERSON: Yes thank you.

ADV ZOLA MAJAVU: It is purely for practical purposes because as at yesterday I had not received an index.

CHAIRPERSON: Oh.

20 ADV ZOLA MAJAVU: From the commission.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: But my colleagues indicate that they had received an index and I would request that we rather work off that one. It is a consolidation of the application and necessary documentation. The last two items is basically the letter in which the Chair had

requested to ask to indicate whether or not there is an objection. At the time the Chair was minded to hear this in chambers and we did not object.

CHAIRPERSON: Yes, yes.

ADV ZOLA MAJAVU: And the subsequent document at the bottom thereof.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: Is simply today's notice of set down.

CHAIRPERSON: Yes.

- 10 ADV ZOLA MAJAVU: Other than that the documents that form part of that bundle are pretty much [intervention].

CHAIRPERSON: Are the same.

ADV ZOLA MAJAVU: The same.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And are common cause between the parties.

CHAIRPERSON: Yes. No initially I thought I should just deal with it in chambers if nobody has a problem but I subsequent thought it might be good if we deal with it in an open hearing.

ADV PAUL JOSEPH PRETORIUS SC: And that...

- 20 CHAIRPERSON: So I am glad that everyone has been able to come even though we did not give a long notice.

ADV ZOLA MAJAVU: That is very much in order it is in the nature of the business.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: That we are dealing with and we take no issue

with that Chair.

CHAIRPERSON: Yes. Yes.

ADV ZOLA MAJAVU: Chair.

CHAIRPERSON: Obviously I – obviously I have read the papers and I just want to mention to you where – what my prima facie thinking is so that you do not have to deal with all kinds of matters that are really not of my concern. My concern is that Mr Agrizzi as far as I can see in his affidavit, main affidavit does say that he has no personal knowledge that any bribes were paid to Ms Jiba. All he is saying is that he
10 interacted with Mr Mti and he and Mr Gavin Watson they interacted with Mr Mti and Mr Mr Mti told him certain things including that some of the money was destined for Ms Jiba. So obviously Ms Jiba also does not know whether Mr Mti said to Mr Agrizzi what Mr Agrizzi's says he said to him. Just like Mr Agrizzi does not know whether indeed Mr Mti had any discussions with Mr – with Ms Jiba and whether he handed over any monies. So my difficulty is that:

1. I do not see how Ms Jiba can cross-examine Mr Agrizzi about those – Mr Agrizzi about those payments in any way that assist the commission. You know. Nor can she as I see it cross-
20 examine him ineffectively or in any way that assist the commission about whether indeed Mr Mti told Mr Agrizzi what Mr Agrizzi says he told him, you know.

So I have that difficulty. The investigations of the commission are ongoing and – and I believe that Mr Mti will come to the commission in due course and give his evidence. If for example he says yes I did say

what Mr Agrizzi says I said about Mr Jiba – Ms Jiba and indeed I did hand over some monies to Ms Jiba. It seems to me that that is the person that may be – could be a good candidate for Ms Jiba’s cross-examination in a way that could assist the commission. You know. So there are those concerns. But obviously that does not affect the other part of what the application is about namely she would like leave to give evidence herself and say that she never gave, accepted or received any money from Bosasa or Mr Mti. That stands on a different footing you know. Even if Mr Agrizzi does not know whether money was
10 paid to her I would be inclined to say well let her come and say I never got any money from Bosasa or from Mr Mti you know. So I do not have a problem with that part I just have a problem with the part for cross-examination. So that is where my concern is.

ADV ZOLA MAJAVU: Chair firstly thank you for those observations.

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: One had anticipated that that is what would possibly trouble the Chair.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And I will attempt to deal with those concerns
20 and perhaps put a different spin to it to the extent that really what one seeks to do is to preserve one’s clients’ integrity and that is the starting point. And I take comfort in the fact that right at the initial stages of the commencement of this proceeding amongst others Chair you indicated that this is about the pursuit of truth and this is also anchored on the rule of law with less adherence to formalism. But it

could not be that parties rights can be you know compromised or prejudiced at the altar of expediency. With that said let me attempt to answer the concerns in two parts. Firstly we would not be presumptuous and assume that in the course of business the commission would in fact call Mr Mti and whether and not Mr Mti would oblige accordingly. We are here on the back of a Rule 3.3 Notice that was served on our client and it is that which prompted us to come. And in the self-same notice it indicated the various rights to which our client could avail herself. The first part was obviously to take issue with the

10 allegations made by Mr Agrizzi through his mouth in an open commission for all and sundry to watch him and hear him. The second aspect to the right about which I will spend less time is saying to the extent that my client wants to test the truthfulness or otherwise of what Mr Agrizzi himself says on affidavit and repeated in an open commission she would like to test that. But over and above that she is not arrogant enough to say I want to cross-examine Mr Agrizzi but I myself do not want to be cross-examined. That was really the point of departure. On the affidavit which form part of the Rule 3.3 I am the first to concede that whatever Mr Agrizzi says is largely hearsay? He

20 repeated it in an open commission. We responded substantively with Ms Jiba's version to which he had an opportunity to respond or to reply which he did and reasserted the hearsay evidence on which his initial submissions were based. And to come closer to the point that Chair you are making is we issued an invitation to him having now read his second affidavit so to speak. The first one let us call it the first

affidavit because that was what was attached to the Rule 3.3. Upon us bringing a substantive application the evidence leaders rightly so gave him a copy of what Advocate Jiba had to say. He then replied with a further affidavit, the second affidavit and from the gleaning thereof we realised that this entire process might even be obviated for the reasons that Chair you have rightly observed. And we issued an invitation and that invitation for want of a better word would be contained in Item 7 which is paginated pages on our bundle 40 through to 42. It is basically a letter wherein we say look we have read what Mr Agrizzi has
10 to say. This is all hearsay and we are inviting him to retract that in an open forum where he made those allegations. Had that been made we would not be here. But that invitation was not accepted so we had to follow through with the application that we believe we rightly made. And that is the point. The second issue is with regard to her testimony in person she had taken the view that look I have given my version. It is not disputed in any material way by Mr Agrizzi himself so I do not really think that there is a need for me to even go ahead and testify unless other persons who may implicate me more directly may come to the commission in the fullness of time which is beyond her control. And
20 we came here on the back of that and that is the understanding. Why we believe that you are partially correct with respect Chair in saying perhaps there is little utility that may be derived in the robust cross-examination of a man who says I do not have personal knowledge I said what I said because other people told me so. But that may well be the case. But it is the manner in which those were made in public in this

forum that we believe that it causes our client serious [indistinct] prejudice. The reputational damage as a result of what Mr Agrizzi said continues unabated to date and it is that mischief which she sought to deal with even on a limited basis. Even if Mr Agrizzi were to come and say openly before the world that I have no personal knowledge I only conveyed that which I heard from other people. We would have been happy with that and leave it at that Chair. And obviously we are also mindful of the fact that whatever we do and say must be aimed at assisting the commission. But the chorology also applies. The collateral damage that was done while people rightly or wrongly
10 believed they are being of assistance to the commission sight cannot be lost of that. And it may appear to be minutia but it is a matter of central importance for my client to say Mr Agrizzi accused me. He asserted certain facts. Even in his second affidavit he still says I deny that I implicated her erroneously. He is not taking the view that look it is what it is and I am happy to accept that I might have been misinformed myself. It may well be that under cross-examination he may give better context that may better assist the commission in terms of what is it that made him assert as facts that which he has asserted
20 with specific reference to Advocate Jiba? So it is a matter of sufficient importance goes to the core of her own constitutional rights. Just as much as Mr Agrizzi was within his rights to come here and assist the commission and implicate others I hold no brief for others I hold a brief for Advocate Jiba implicate her in the manner that he did openly. You see Chair what is unfortunate about this is the fact that at the time

when these allocations were made she was a serious holder of a very key constitutional office which unfortunately as fate had it and it has nothing to do with you Chair. But at the time when these allegations were made there was already a similar process which was established precisely to look into her fitness to hold office and the allegations that Mr Agrizzi made if found to be true had a direct impact on her fitness to hold office and it was an invitation which was issued to all and sundry. And as fate had it Chair a day or so before that enquiry was to commence what Mr Agrizzi was due to say here had already been

10 leaked to the media. We took the Judge in that enquiry into confidence and said Judge to the extent that these are allegations that you might have read about over the weekend we admit that they fall on all fours with your terms of reference. We placing it on record so that in the fullness of time it may well be put as evidence before you and then we can deal with it at that forum. In fairness to Justice Mokgoro she acknowledged that it is not evidence before her but it could not just be ignored as if it did not happen. Evidence was then placed before that inquiry with the assistance of this commission and arrangements were then made for Mr Agrizzi to come and testify before the Mokgoro Inquiry

20 at which the credibility or otherwise should have been tested there in that particular forum. Mr Agrizzi's lawyers are sitting to my left. An agreement was made that he would testify. We pencilled in dates and on the eve thereof he had a Damascus Road experience and decided that no he is not going to subject himself to that process because he is scared that he might incriminate himself. Unlike you Chair the Mokgoro

Inquiry did not cede with the force of compulsion. So when he said no I am not making we all had to lick our wounds and accept that it is what it is hoping that he would at the very least be amenable to coming back to this commission at which those allegations were made and then we can deal with them subject to your directions. We accepted it on that basis that we still have another alternative remedy at which this issues which are of public importance can then be tested. It is against the background that we would persist with our request even on that narrow basis because what Mr Agrizzi has done with respect and I – I cast no
10 aspersions on my colleagues' on behalf of the evidence leaders. They shared with us what he had to say on Advocate Jiba's affidavit. We then said look if the man can say this is just hearsay we would have accepted that and possibly withdrawn that part of our application or dealt with it differently. Now we sitting in a situation where that affidavit again where he restates that this is you know hearsay. It was done between us it was not done publicly and that is where my client's difficult would be. We are not suggesting that we should use this as a forum to ventilate her personal feelings but it is the essence of what was said here publicly by Mr Agrizzi that we believe that we are entitled
20 to cross-examine him on even on that very limited and narrow basis. However if the Chair is inclined to say look reserve your client's rights to deal with Mr Agrizzi as well as Mr Mti and any other in relation to that which Mr Agrizzi relays as second or third hand knowledge that may well be another practical way of dealing with it but I would have been remiss if I had not stated categorically what really [indistinct] my

client with regard to this conduct by Mr Agrizzi.

CHAIRPERSON: Well Mr Majavu I think that you have addressed issues very pertinently and very usefully if I may add. I think we are not far apart. With regard to what Mr Agrizzi said to the commission when he gave evidence and his – in his statement anybody who was listening and anybody who reads this statement will know that Mr Agrizzi did not say and does not say that I have personal knowledge of money being paid to Ms Jiba by Bosasa or Mr Mti handing over money. That all he is saying is according to Mr Mti in effect some of the money
10 that we – that we were handing over to him was destined to Ms Jiba and I do not know whether he goes to the extent of saying Mr Mti said he was paying it over or not but certainly he says that Mti said part of the money was money he was going to hand over. And he makes it clear he was never anywhere where he saw it being handed over. I accept that even that being said in a public hearing is not something that anyone would like to be said about them.

ADV ZOLA MAJAVU: Ja.

CHAIRPERSON: Ja. I accept that. But of course you know in a forum such as this some of the things that are said will be hearsay. The rules
20 are not as strict as in a court of law but we must always be sensitive and I think we try to be sensitive all the time to the things that are being said by other people about other people. So my – my inclination is that insofar as payment of money is concerned my inclination is – is to dismiss the application to cross-examine. Or if we think that it might be better to postpone it and deal with it maybe when other witnesses

might have come forward. But I certainly intend to grant Ms Jiba leave to give evidence if she wants to in regard to any allegation even if it is a hearsay allegation that she may have received bribes. But it may be that her evidence may be more conveniently heard when other witnesses such as Mr Mti have given evidence so that then she can deal with everything. Or she might decide that there is no need for her to give evidence if for example Mr Mti said:

1. I never said what Mr Agrizzi said I said to him.
2. I never paid any money over to Ms Jiba for bribes.

10 But it is a decision she can take later on. But I am simply saying that in regard to that one I do not have a problem granting leave. I do have concerns about this other one and I am thinking – I am inclined to either dismiss it now or if – or say let us postpone it and deal with it once other witnesses have come forward and we have heard what they say. I do not know what your – what your submissions might be on that.

ADV ZOLA MAJAVU: Thank you Chair. Firstly it is not only about the payment or receipt of bribes that Mr Agrizzi lays at the door of Advocate Jiba and more sensitively on account of her position in the
20 National Prosecuting Authority. He also accuses her of obstruction of justice because he makes allegations that she somehow leaked sensitive information relating to the Bosasa investigations. So that is a self-standing criticism again which is placed on a higher footing I submit because if the person who is supposed to be prosecuting not necessarily personally but who is in that office then dishes out

information that may tend to undermine that prosecution. That is a serious – that is a serious matter. So that is the second issue. And thirdly you see Chair ordinarily I would have no hesitation agreeing with the inclination that you are expressing at this stage because it is sensible but the difficulty here is if you have regard and I will just invite Chair to journey with me to his second affidavit.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And you will see in there he is seeking to bolster...

10 CHAIRPERSON: Yes, yes I saw that actually I meant to raise that with you.

ADV ZOLA MAJAVU: Yes.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: So it is not something that we can just gloss over and say on the one hand he says, no it is hearsay bla, bla, bla but when he comes back the second time around he ever amplifies that which he says might have amplified his thinking or the inference that he may have rightly or wrongly arrived at. And if we had left that unchallenged it would not be open to us later to say ja but with regard
20 to the bribes it is in the pocket nobody understands him to have said he has personal knowledge of that but he put it out there. But let us park that aside. What about the documents? He goes chapter and verse about the documents and how he believes that – in fact he asserts that she would have had access to these documents trying to draw a correlation in saying that which Mti said was how they received the

documents must be reasonably possibly true because look at this? He introduces the issue of the Mercedes Benz for the first time but with all of that said Chair I will conclude by indicating what my stance is on the prima facie inclination. But you see Chair the difficulty that we are going to have we are here on account of a specific Rule 3.3. If we had not dealt with it timeously and took the stance that let us await everybody else to come and testify we are going to tread into dangerous seas.

CHAIRPERSON: Yes. No I agree.

- 10 ADV ZOLA MAJAVU: So pragmatically Chair we had to be seen to be respecting that invitation by you to say here are these allegations and at the time when that invitation was made it was clear even then that we dealing with hearsay evidence. So we could not say on a mere reading of this affidavit anybody can see that he does not say that but it was a serious allegation that we had to deal with.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: Then to the point. Chair I would rather you do not dismiss now.

CHAIRPERSON: Yes.

- 20 ADV ZOLA MAJAVU: We have made the point.

ADV ZOLA MAJAVU: Yes.

ADV ZOLA MAJAVU: Let this application perhaps stand over.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: To when everybody else that may potentially corroborate Mr Agrizzi.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: Has either done that.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: Or disabused themselves of that.

CHAIRPERSON: Ja.

ADV ZOLA MAJAVU: And then we can then come back and say Chair now that Mr Mti for example or Mr Watson has now had their say.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: This is what our inclination is so that I do not
10 leave my client high and dry.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And close all these doors for her it would have been irresponsible.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: For us not to have approached you but there is absolutely nothing sensibly and legally wrong with that prima facie inclination. With that qualification Chair that our client's rights should remain reserved and let us deal with it on the basis that in the fullness of time we will still come back because we now know as the Chair has
20 observed that at least he is relying on hearsay evidence he is not asserting it personally to the extent that he seems to do so in his second affidavit my client's rights remain reserved. We will have no difficulty abiding that type of order Chair.

CHAIRPERSON: Yes. No I - I think that is in order. I will be inclined to do - to do that. I will - I doubt that anybody has any problem with -

with that. So I think that and - and I also need to just say that nothing that I have said should be construed as any - as criticism for the fact that you - you filed an application for leave to cross-examine Ms Jiba.

ADV ZOLA MAJAVU: Mr Agrizzi.

CHAIRPERSON: Mr Agrizzi. I am sorry. Mr Agrizzi. There is no criticism at all for - for that and you had to respond to the Rule 3.3 notice in - in a way that you believe it was correct and I think many people would have responded the way you did. So - so I - I do not think there is a problem with it.

10 It is just that once I have to decide whether to grant leave or not I have to consider all of these matters and we then take it from there but the - the point you have made with regard to what you have referred to as the - defeating the ends of justice may need closer examination than the allegation about whether Ms Jiba was paid bribes or not.

 So it might need closer examination next time when we look at the matter.

ADV ZOLA MAJAVU: Chair then as a parting shot.

CHAIRPERSON: Hm.

20 ADV ZOLA MAJAVU: Purely for context and I raise this because it was contained in the second affidavit by - by Mr Agrizzi.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: In - in the quest for the pursuit of truth.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: I - I would humbly urge and without being

prescriptive on the investigators ...

CHAIRPERSON: Ja.

ADV ZOLA MAJAVU: On how they do their job.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: To - to also pay closer scrutiny to these new allegations ...

CHAIRPERSON: Ja.

ADV ZOLA MAJAVU: That he amplifies in his second affidavit because ...

10 CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: That is also what could have potentially you know ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: Bedevilled the waters.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: So to speak because you are an MP official.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: First you are accused of a bribe.

CHAIRPERSON: Hm.

20 ADV ZOLA MAJAVU: Then you are called a snake ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And then new issues are introduced after you have played open cards with the Commission.

CHAIRPERSON: Hm, hm.

ADV ZOLA MAJAVU: It also deals with the circumstances pertaining to

the flow of documents.

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: It is - it is a very central issue ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: Because in his replying affidavit ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: And Chair you can look at it at your own convenience.

CHAIRPERSON: I have looked at actually.

10 ADV ZOLA MAJAVU: Oh, okay.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: He keeps referring to either Mti ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: Lesenga (?).

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: There is also a conjunctive and a disjunctive ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: And/or ...

CHAIRPERSON: Hm.

20 ADV ZOLA MAJAVU: And that is where my client gets drawn in ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And it is something that I am flagging now ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: To say when we do come back we are not going to take it lying down ...

CHAIRPERSON: Yes, yes.

ADV ZOLA MAJAVU: Because it does cast aspersions on her good integrity but ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: We leave it at that and I am happy with the - the direction that Chair you and I have debated.

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: It does make sense.

CHAIRPERSON: Yes. I must say that with regard to the matter that
10 Mr Agrizzi raises in what you call the second affidavit what is that now?

ADV ZOLA MAJAVU: (No audible reply).

CHAIRPERSON: With regard to the matter that Mr Agrizzi raises for the first time in what you call the second affidavit I did take note of - of it when I was looking at this affidavit. I have actually directed that an investigation should be conducted into it. More information should be obtained as to it because as you say if it were true it could be seen as bolstering the other allegations.

So - so there would be investigations because in regard to that one he seems to be speaking more from personal knowledge ...

20 ADV ZOLA MAJAVU: Yes.

CHAIRPERSON: Than with regard to the other allegations. So that one may well also stand on a different footing. I saw that you - you wrote a letter to say it is hearsay blah, blah, blah but I have said it should be investigated and obviously you would be contacted if there is more ...

ADV ZOLA MAJAVU: Yes.

CHAIRPERSON: That - that comes out and - and then your client can give her version and then when we deal with the matter next time it may be that even if I were to say in regard to the allegations of bribery I do not grant leave to cross-examine Mr Agrizzi but in regard to that one I may well grant leave but it is something we would discuss at that stage.

ADV ZOLA MAJAVU: That is fair Chair ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And for avoidance of ...

10 CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: Of doubt my client has emphatically instructed me to place on record that she has absolutely no difficulty cooperating with the Commission and she actually welcomes that type of investigation. So that when she does respond it is also not on a piecemeal basis ...

CHAIRPERSON: Yes, yes.

ADV ZOLA MAJAVU: Because it is not of assistance ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: Either to her ...

20 CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: Or to - to the Commission ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: And the Chair should also note that even with regard to this particular Rule 3.3 notice.

CHAIRPERSON: Hm, hm.

ADV ZOLA MAJAVU: I place it on record simply to demonstrate the point.

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: She was given a truncated notice.

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: However the investigators and perhaps with the evidence leaders ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: Explained to her ...

10 CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: Why it was necessary to give her a shortened notice ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: And an explanation that she accepted and nevertheless cooperated ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: With everybody.

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: So it should not be seen as if ...

20 CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: She is shying away from dealing with this.

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: We are merely asserting her rights ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: And it is something that I am duty bound ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: To do and also be guided ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: By what is pragmatic ...

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: And for that I am grateful Chair.

CHAIRPERSON: Hm.

ADV ZOLA MAJAVU: Unless there are any other issues that would be where I propose to leave it.

- 10 CHAIRPERSON: No there are no other issues Mr Majavu save that I do want to say that I appreciate the very constructive approach you have adopted in presenting your argument and in protecting your client's rights without in anyway making it difficult for the Commission to do its job. I think you - you strike that balance very well.

So I am grateful for - for that as well. We - we see a lot of that among practitioners who come before the Commission but there are exceptions where we do not see that. So - so thank you - thank you very much.

ADV ZOLA MAJAVU: I have been well trained. Thank you Chair.

- 20 CHAIRPERSON: Thank you. Let me hear counsel representing Mr Agrizzi whether she has any objection to what we have tentatively agreed should happen. Yes.

ADV JULIE ANN HOWARD: Morning Chair.

CHAIRPERSON: Have you got any difficulty with what I am inclined to do with which Mr Majavu has no problem?

ADV JULIE ANN HOWARD: No. Thus fair we do - we do not have any issues with it.

CHAIRPERSON: Yes.

ADV JULIE ANN HOWARD: My main submissions today were going to relate to the allegations of the hearsay evidence and the fact that in the event that Mr Mti is actually called it would no longer be hearsay evidence ...

CHAIRPERSON: Ja.

ADV JULIE ANN HOWARD: Because obviously he would confirm it.

10 CHAIRPERSON: Yes.

ADV JULIE ANN HOWARD: I was further just going to make the submission that in the event that he is not called and he does not actually give the evidence and it remains hearsay evidence. In terms of the Commission's Rules I believe it is Rule 6.1 ...

CHAIRPERSON: Hm.

ADV JULIE ANN HOWARD: The Commission is still entitled to accept ...

CHAIRPERSON: Hm.

20 ADV JULIE ANN HOWARD: Evidence which is not normally admissibly in an ordinary court ...

CHAIRPERSON: Hm, hm.

ADV JULIE ANN HOWARD: Which obviously it would constitute hearsay evidence.

CHAIRPERSON: Hm, hm.

ADV JULIE ANN HOWARD: It would just be this Commission's

prerogative to attach as much weight as it deems fit ...

CHAIRPERSON: Hm.

ADV JULIE ANN HOWARD: To the evidence that was tendered.

CHAIRPERSON: Ja. No that - that is - that is fine. So there is no problem from your side?

ADV JULIE ANN HOWARD: No.

CHAIRPERSON: Yes.

ADV JULIE ANN HOWARD: It is just with regards to the allegation of Ms Jiba being referred to as snake. In Mr Agrizzi's testimony that was
10 actually offered in front of this Commission he explained that it was not any sort of a derogative nickname. It was just a code name that was given and he actually explained what Mr Mti said.

CHAIRPERSON: Well - well it - it might be a code name but it - it is a code name that nobody would like to be associated with. So - so that - that - that does not really help alright.

ADV JULIE ANN HOWARD: Yes. He just - he explained the reason behind it.

CHAIRPERSON: But it was a code name and Mr Majavu - Mr Majavu has indicated and Ms Jiba has indicated that she took - takes offence
20 it.

ADV JULIE ANN HOWARD: Yes.

CHAIRPERSON: Ja. Okay.

ADV JULIE ANN HOWARD: The last point I would just like to make is that Mr Agrizzi has emphatically said that he would be happy to abide by any ruling that this Commission makes in this regard ...

CHAIRPERSON: Yes.

ADV JULIE ANN HOWARD: And also he further just confirms that the evidence that he has tendered was for the most part told to him. He did not have personal knowledge of it. So to cross-examine someone who does not have personal knowledge of what might have transpired might - might take this Commission just on a bit of detour.

CHAIRPERSON: Yes.

ADV JULIE ANN HOWARD: It might waste a bit of time.

CHAIRPERSON: Yes.

10 ADV JULIE ANN HOWARD: Again as - as - as Chair mentioned earlier
...

CHAIRPERSON: Hm.

ADV JULIE ANN HOWARD: The actual person to be answering these questions would probably be Messieurs Mti or Watson.

CHAIRPERSON: Hm. Okay. No thank you.

ADV JULIE ANN HOWARD: Other than that I have no further submissions.

CHAIRPERSON: Thank you.

20 ADV JULIE ANN HOWARD: Is there anything else the Chair wishes I
address?

CHAIRPERSON: Nothing, thank you.

ADV JULIE ANN HOWARD: Thank you.

CHAIRPERSON: Thank you. Mr Pretorius I guess you have nothing to say?

ADV PAUL JOSEPH PRETORIUS: Yes. Save - save Chair that

because in the fullness of time direct all circumstantial evidence may assist in asserting the truth of the essential dispute about the payment or receipt of money. No order should be made which should exclude the possibility of a renewed application for cross-examination by Ms Jiba even of Mr Agrizzi because of the circumstantial nature for example the delay in prosecution, the receipt of documents and the like.

CHAIRPERSON: Yes. Yes. No, no that is fine. The - the application will not need to be renewed because it is not going to be dismissed.

10 ADV PAUL JOSEPH PRETORIUS: I see.

CHAIRPERSON: So it will simply be heard at a later stage maybe with or without supplementary papers depending on what is going to happen.

ADV PAUL JOSEPH PRETORIUS: In short the possibility of a necessity to cross-examine Mr Agrizzi may arise in the future.

CHAIRPERSON: The - the situation might be different when we look at it.

ADV PAUL JOSEPH PRETORIUS: Yes.

CHAIRPERSON: So ...

ADV PAUL JOSEPH PRETORIUS: Thank you Chair.

20 CHAIRPERSON: So we are not going to ...

ADV PAUL JOSEPH PRETORIUS: Nothing further to add.

CHAIRPERSON: Dismiss it. Thank you. Having heard argument on behalf of Ms Jiba order I make in this matter is that Ms Jiba's application for leave to cross-examine Ms - Mr Agrizzi is postponed sine die and may be set down at a later - at a stage when other

witnesses have given evidence relating to Bosasa and at that stage as is always the case notice will be given to all parties concerned. The application is therefore postponed sine die. Thank you very much. So we are done with that. I think we will take an adjournment to allow the team that is going to lead the evidence of the next witness in the Estina matter to get everybody ready for that. Thank you.

ADV ZOLA MAJAVU: Chair ...

CHAIRPERSON: Yes.

ADV ZOLA MAJAVU: May I then taken it that we are accordingly
10 excused (intervenues).

CHAIRPERSON: You are excused. Yes thank you.

ADV ZOLA MAJAVU: Thank you Chair.

CHAIRPERSON: Thank you. We will - we will adjourn for 10 minutes.
We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We are supposed to have resumed about twenty five
past ten and we did not do so because I needed to have a meeting with
the Legal Team on various witnesses so to make up for that as far as
20 we can we are not going to take the tea break, we will run through until
one o'clock.

Yes Ms Gcabashe?

ADV LEAH GCABASHE SC: Thank you, and morning again Chairman.

CHAIRPERSON: Good morning.

ADV LEAH GCABASHE SC: Chairman we have – we had originally

intended to call two witnesses today, with your leave we are asking that we only call one witness because of some technical issues and matters that we would like to discuss with the second witness, just to be sure that the material that is presented is in fact the material he wants to have presented to you.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: There is a little bit of a technical glitch there Chairman so we ask that we only lead the evidence of one witness today and with the other witness we will reschedule when he
10 returns and by that time I think we will have resolved what I really think are technical issues that must be resolved, because he is more comfortable with that.

CHAIRPERSON: No that's fine. We will do this, we will do that, let us deal with one witness for today.

ADV LEAH GCABASHE SC: Thank you, as it pleases.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE SC: Ms Buthelezi will be leading the evidence of the next witness.

CHAIRPERSON: Thank you. Yes Ms Buthelezi?

20 ADV ZINHLE BUTHELEZI: Chair my witness for today is Mr Moremi. Mr Moremi is the former Municipal Manager for Phumelela Municipality where the Estina Dairy Farm was located. May I ask that this witness be sworn in?

CHAIRPERSON: Yes, please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR TEKOETSILE MOSES MOREMI: Tekoetsile Moses Moremi.

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

MR TEKOETSILE MOSES MOREMI: No.

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

MR TEKOETSILE MOSES MOREMI: Yes.

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

MR TEKOETSILE MOSES MOREMI: So help me God.

MR TEKOETSILE MOSES MOREMI: (duly sworn, states)

ADV ZINHLE BUTHELEZI: Thank Chair.

CHAIRPERSON: Yes you may proceed.

ADV ZINHLE BUTHELEZI: Chair Mr Moremi has given us an affidavit that was given to the Chair yesterday. He has now gave us a supplementary statement which has also been added to the bundle.

CHAIRPERSON: Yes do you want this bundle to be admitted and marked?

20 ADV ZINHLE BUTHELEZI: Yes as Exhibit HH12.

CHAIRPERSON: The file containing the statement of Mr Moremi will be marked Exhibit HH12, yes.

ADV ZINHLE BUTHELEZI: Thank you Chair. Mr Moremi there is a bundle HH12 in front of you, if you turn below the number one, do you confirm that the document that appears is the affidavit that you made

for the Commission?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

ADV ZINHLE BUTHELEZI: And if you go further backwards, below the big number two under the divider do you confirm that, that is the supplementary statement that you made today?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Well Ms Buthelezi, if he went backwards and I think to get to divider number two he had to go forwards not backwards.

10 ADV ZINHLE BUTHELEZI: Yes, I'm sorry Chair, yes but do you confirm that, that is the statement that is marked Exhibit HH12 from pages 1 until 4, is the statement that you made today?

MR TEKOETSILE MOSES MOREMI: Yes I confirm Chair.

ADV ZINHLE BUTHELEZI: It's dated on page 4.

MR TEKOETSILE MOSES MOREMI: Yes I confirm Chair.

ADV ZINHLE BUTHELEZI: Thank you. Mr Moremi would you please then give us your employment history within the Free State Government?

20 MR TEKOETSILE MOSES MOREMI: Thank you Chair. On the 15th of January 2011 I joined the Municipality – Phumelela Local Municipality as the Chief Financial Officer, before then I was working for the banking institution called Absa and I was the Regional Manager who was responsible for the portfolio on the Free State Province and then on the 1st of May 2012, I was fortunate Chair, and I was appointed as the Municipal Manager of Phumelela Local Municipality and that

coincided with the period when the Vrede Integrated Dairy Project was – when it was started to be implemented, and then – later then resigned and joined the Free State Provincial Treasury as the Chief Director, which is the position that I’m currently holding now.

ADV ZINHLE BUTHELEZI: Yes and when did you start in that position?

MR TEKOETSILE MOSES MOREMI: I started on the 17th of February 2014.

ADV ZINHLE BUTHELEZI: Thank you, Mr Moremi will you please give
10 us your qualifications – your highest qualifications?

MR TEKOETSILE MOSES MOREMI: My highest qualification is B-Com Accounting, I also do have a Diploma in Human Resource Management and quite a number of certificates including the certificates of minimum competence which it’s the requirement from National Treasury for anybody that is working for a Municipality to have that particular certificate.

ADV ZINHLE BUTHELEZI: Thank you, Chair for the purposes of leading Mr Moremi’s evidence I will go through both, his original affidavit and the supplementary because some of the information that
20 he gives on the original, runs over to the supplementary.

CHAIRPERSON: You’ll refer to both simultaneously.

ADV ZINHLE BUTHELEZI: I’ll refer to both simultaneously yes.

CHAIRPERSON: That’s fine.

ADV ZINHLE BUTHELEZI: Thank you. Mr Moremi in your supplementary statement you give us a brief history about the

ownership of this Krynaauwslust farm that is in Vrede, would you please give us that history?

MR TEKOETSILE MOSES MOREMI: Thank you Chair. When I joined the Municipality in 2011 as a Chief Financial Officer, what was expected of me was to make it a point – and those rules and responsibilities are clearly defined in Section 81 of the Municipal Finance Management Act, is to make sure that we account for all the assets, expenditure and the revenue of the Municipality. So when I was going through the asset registry of the Municipality that time, I then
10 noticed that the Municipality owns a farm called Krynaauwslust. That farm was acquired around 1893 and I must indicate Chair, that the town, Vrede and township, Thembalihle are also in that particular farm. The farm is measuring 4 439, that is the total...[intervention].

CHAIRPERSON: Hectares?

MR TEKOETSILE MOSES MOREMI: Hectares, ja, by that time the – I noticed that the far was then leased on a 99 year agreement to the Krynaauwslust Boerdery Trust. Chair that particular Krynaauwslust Boerdery Trust was, according to the records that I've seen was established in 1993 and it was established through the councillors by
20 that time during that period of the transitional local council. The councillors by that time, those are the ones who actually established that particular Trust, so it was actually operating as a Trust for the community by that time but in 1993 then this entity was then established just a year before the democratic dispensation and council by that time then took a resolution to then lease this particular farm for

a period of 99 years and that 99 years was from 1993 and in that farm it was the livestock, the farming equipment and everything was there...[intervention].

CHAIRPERSON: Would that have been an all white council at that time?

MR TEKOETSILE MOSES MOREMI: It was all white councillors Chair.

CHAIRPERSON: Yes okay.

MR TEKOETSILE MOSES MOREMI: So when I started requesting financial information the – because I just joined the Municipality in 10 2011, when I start asking the – because it was a Municipal entity, asking for the audited financial statements and the records from the accountant then, I found it very difficult to get those particular records because I had to make it a point that we account for the revenue from that particular farm because it is the Municipality's farm. So I had some difficulties there getting the audited financial statement, to an extent that – because then I was pursuing it, to an extent that the Trustees, it was during that 2011 instead of giving me the audited financial statement, they then decided to sell the cattle and the equipment, we were not part of that particular auction and later then 20 dissolved the Trust. So I even requested [indistinct] can I have the audited financial statement up until the dissolution of the Trust, I could not get them and even when I left in 2014 there were no financial statement, audited for that particular Trust, so there was absolutely no accounting records for that.

CHAIRPERSON: Let me just understand, was the Trust created by the

council?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: It was created by the council.

MR TEKOETSILE MOSES MOREMI: It was created by the council.

CHAIRPERSON: So there would have been a resolution of council saying a Trust must be created for this and that purpose?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: And the Trustees, how were they identified or selected?

10 MR TEKOETSILE MOSES MOREMI: Trustees, Chair, were councillors of that Municipality at that time.

CHAIRPERSON: At that time?

MR TEKOETSILE MOSES MOREMI: Ja, those councillors were then the Trustees of this particular Trust.

CHAIRPERSON: But as you understood the – I guess at some stage you got, well you would have got hold of the deed of Trust, did the first Trustees have to cease to be Trustees when they ceased to councillors and then others would take over or was the position that those who were the first Trustees just continued even when they were no longer
20 councillors?

MR TEKOETSILE MOSES MOREMI: Chair let me place it on record that, those are some of the difficulties that I actually encountered because I did request for the Trust deed but I couldn't find any record, the same as the financial statement. So I couldn't understand exactly what was – what happened subsequent to those councillors ceasing to

be then councillors after 1994.

CHAIRPERSON: Yes you didn't approach the Master of the High Court because a copy – well the original actually, that's where it would be?

MR TEKOETSILE MOSES MOREMI: I didn't Chair but I think if one can still go through the records of the Municipality we might be able to get the Trust deed.

CHAIRPERSON: Yes because every Trust gets registered with the Master of the High Court in the particular province or division and he or she is the one who issues letters of executorship which gives powers to
10 the Trustees to act as Trustees without the letters of executorship from the Master of the High Court they don't have power to do anything. So that's where you go if you can't get it anywhere then a copy can be found but the long and short of it, is that you asked for a deed – a copy, you were not given and instead the livestock was sold and the Trust was dissolved?

MR TEKOETSILE MOSES MOREMI: Yes Chair, there was an amount of approximately R8million that was actually paid into the Municipality's account after that particular auction but in terms of how they arrived at that R8million, because we did not even have the list of the stock, I'm
20 talking about the livestock that were in that particular auction, how much was each livestock sold for, so those details were not available, it was only R8million that came into the account and they then reported that, this is the proceeds from the sale of the livestock and that money was then accrued to the Municipality.

CHAIRPERSON: But I would have thought that you would have told

the council, the existing council at the time, here is this problem, the Mayor and so on and they would have assisted you to get the information because it would have also been their job to try and find out because they must look after the interest of the Municipality. Did you tell them you were having these difficulties?

MR TEKOETSILE MOSES MOREMI: Yes Chair, I did inform the Mayor by that time that – because there were some letters...[intervention].

CHAIRPERSON: And that was Mr Motaung?

MR TEKOETSILE MOSES MOREMI: It was Mr T J Motaung ja, I told
10 him that I'm having difficulties in getting that particular information from the – from the accountant who was part of this particular Trust. So I did, I did inform – but I don't think the Mayor could get because that – his name, the accountant, if I'm correct Chair it was Mr Jakwaya, he was just a very difficult person who did not want to cooperate and did not want to give any information.

CHAIRPERSON: And you didn't get much support from the council and the Mayor to try and get to the bottom of this?

MR TEKOETSILE MOSES MOREMI: No I had indicated to the Mayor who then that he'll also try from his side to try and check how he can
20 get those documents but Chair I must be honest, that at the end, I ended up not getting anything from Mr Jakwaya.

CHAIRPERSON: Yes, okay alright, thank you.

ADV ZINHLE BUTHELEZI: So the R8million is the only amount that you received from this Trust when it was dissolved in 2011?

MR TEKOETSILE MOSES MOREMI: Ja that is the only money that

was paid into the Municipality's account subsequent to that particular auction that was held and I must indicate and place it on record that none of the municipal officials were part of that particular auction. If I'm not mistaken, when I was going through the records there was an Afrikaans article that was actually placed, where the details and the date of the auction was placed, it was just in that Afrikaans newspaper so you could see that it was actually not open for everybody but ja, we got R8million but as to whether this is really the amount that accrued to the Municipality by then, I can't confirm because that was supposed to
10 be confirmed through audited financial statements.

CHAIRPERSON: Well it's very strange because you say the Trust had been established in 1993, so by 2011 you were close to 20 years of its existence and therefore there should have been a lot of documentation relating to the activities of the Trust over the 18 years or so that it has been in existence and what money it was bringing to the Municipality as well and financial statements and everything because it was a council Trust, it was accountable to the council, to the Municipality. So there's the question of what were the different councils that were established over the 18 years, what were they doing about finding out what was
20 happening about this Trust and to the extent that the position was that the farm had been leased to this Trust or to whoever it was leased to over this period, where was the rent going, was there rent that was paid and to whom was it going and what were they doing with it. Because from what you say it looks unlikely that it was coming to the council, you didn't pick up anything that showed that any rent was paid to the

council?

MR TEKOETSILE MOSES MOREMI: No, no nothing Chair and even that time I engaged the Municipal Manager at that time, just to try and check whether there were regular financial reports presented to council on the performance of that particular – because yes it was 100% owned by the Municipality so surely there was supposed to have been regular records presented to council even giving details in terms of the movement of the livestock and whatever else. So those records should have been there, but Chair, when I joined the Municipality in 2011 there
10 was none of those but it was my obligation as a Chief Financial Officer to make it a point that any asset that is in the Municipality is properly accounted for – I requested those particular details ja.

CHAIRPERSON: And the Auditor General hadn't picked it up as far as you know, over the years?

MR TEKOETSILE MOSES MOREMI: Chair, I think – I'm just talking out of correction because I was not there, in fact when I joined the Municipality there were consultants that were appointed by the Municipality they were assisting in the preparation of the financial statement, I then also asked them that particular information and I
20 couldn't get it. I also asked the Auditor General by that time as whether there is anything they have and I couldn't get anything else Chair because it was bothering me that, you cannot have such an important asset of the Municipality, that is operating, and I mean if you check the period exactly when it was operating, and yet there are no records even indicating whether dividends and anything. So it was

really a concern to me Chair but all went in vain so I couldn't get any information.

CHAIRPERSON: Yes, well the matter should not rest there, steps should be taken to see whether there may be any corruption involved in regard to that because the Commission has to look at issues of

ADV ZINHLE BUTHELEZI: We have noted it Chair.

CHAIRPERSON: Ja thank you.

ADV ZINHLE BUTHELEZI: Thank you, Mr Moremi was there any assets that remained when the Trust was dissolved, any assets that
10 remained and that were handed over to the Municipality when this Trust was dissolved?

MR TEKOETSILE MOSES MOREMI: No the only thing that remained was the farm itself which, in terms of my estimation, valued close to R30million, so it was only the farm. Remember the livestock and all the implements, everything was sold, so the only asset which remained and which was in our book, was actually the farm, totalling 4 439 as I've indicated.

ADV ZINHLE BUTHELEZI: Yes this 4 439 hectares it includes the town itself and the township, the Vrede Thembalihle township?

20 MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Yes and then what did you do then with this farm after the dissolution of this Trust?

MR TEKOETSILE MOSES MOREMI: The records that I obtained from the Municipality, because I was not the Municipal Manager by that time, is that, after the dissolution of the Trust somewhere in 2011, then the

3 368 hectares of the 4 439 hectares was actually leased to four farmers. So there were four local farmers, I must indicate Chair that they also four white local farmers, the information is given in terms of the number of hectares and everything that was leased. So that was leased and the period was from October 2011 and then expiry date was the 30th of September 2013 and the annual combined rental that was paid by this four farmers, was R958 880 so that was the money that was paid to the Municipality for 3 368 but that was the annual rental that was paid because actually it was paid in two tranches, on tranche
10 in March and then the other one in September.

CHAIRPERSON: So it was just the rent, the annual rent was just under R1million?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

ADV ZINHLE BUTHELEZI: Thank you, we have heard evidence from Mr Radebe as well as Mr Venter regarding the lease of this farm that was now entered into between the Municipality and the Free State Province. I'm interested in the first meeting that took place on the 12th of June 2012, according to Mr Radebe, would you please just – according to Mr Radebe, or during this council meeting, this meeting
20 was hijacked by the officials from the Department of Agriculture as well as the MEC at the time, Mr Mosebenzi Zwane and when they came to request that they be given this farm, please take us through what transpired in that meeting?

MR TEKOETSILE MOSES MOREMI: Okay Chair, it was exactly on the 12th of June 2012, so that is exactly the date in the morning, the

delegation from the Free State Department of Agriculture and Rural Development led by Mr Thabethe then visited the Municipality. We had a planned – pre-planned council meeting for that particular day, so they came at around 8 o'clock and then they requested to do a presentation to all – just before the council started that to all the councillors but there were also some local business people including some local farmers who were already been invited, I assumed that the invitation was then prepared by the Department. so it was in a boardroom and all were there and that's when Mr Thabethe presented, it was in a
10 PowerPoint presentation that he made. Chair if you can allow me, I've given an extract of whatever was in that presentation because we never had the hardcopy it was just a PowerPoint presentation...[intervention].

ADV ZINHLE BUTHELEZI: Sorry before you go there Mr Moremi, the farmers that you referred to, was it the beneficiaries, these upcoming small farmers at Vrede or was it other farmers?

MR TEKOETSILE MOSES MOREMI: No at that time there was no mention of any beneficiaries, it was just the local farmers because remember this was like a huge project that was going to be established in Vrede. Remember Vrede or Phumelela Municipality is a very small
20 rural Municipality in the Eastern Free State, very small with almost very low revenue base so this particular project, as it was covered in the presentation was going to be one of the massive projects in Vrede which was going to create more jobs. So obviously there were going to be a need for some local farmers to also supply raw milk to the dairy farm so that's why they were now part of thing because it was going to

benefit almost the community and the farmers by that time but there was no mention about the beneficiaries at that stage.

ADV ZINHLE BUTHELEZI: Okay, then go ahead and go to where you wanted to refer Chair to, is it what was recorded in the meeting on that day, that was on page 8 of your affidavit.

MR TEKOETSILE MOSES MOREMI: That is – I must indicate, that is on my original affidavit page MM04.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: If you allow me Chair, I would like
10 to read it thoroughly.

CHAIRPERSON: Yes do so.

MR TEKOETSILE MOSES MOREMI: “During the month of June 2012, the team from the Department of Agriculture, led by the head of Department...[intervention]

CHAIRPERSON: I’m sorry I thought you were reading from page 4.

MR TEKOETSILE MOSES MOREMI: From MM03 Chair.

ADV ZINHLE BUTHELEZI: Oh from page 3 Chair, it’s the last paragraph 5.

CHAIRPERSON: Yes we just say page 3, MM is your initials.

20 MR TEKOETSILE MOSES MOREMI: Okay Chair.

CHAIRPERSON: Alright, yes.

MR TEKOETSILE MOSES MOREMI: “During the month of June the team from the Department of Agriculture, led by the head of Department, Mr Thabethe visited the Municipality and made a presentation about Vrede Integrated Dairy Project to municipal

council, community and commercial farmers. The purpose of the presentation was to create awareness about the project and to request the Municipality, I'm referring to council if I'm saying Municipality, to avail the farm, Krynaauwslust for the operation of the dairy farm production facility. In his presentation the HOD quoted the following, the MEC for Rural Development and Agriculture at that time, honourable Mosebenzi Zwane, in his departmental budget vote for the financial year 2012/2013 resolved that a dairy and a processing plant will be established in Vrede and a specific amount will then be set aside for the project. The project will be one of the biggest in the country as the Department will be partnering with a company from India called Paras and thus attracting foreign direct investment to the province. The project, during it's initial phase will employ 500 permanent employees and the total investment in the property plant and machinery at the initial phase was estimated at around R500 000. The project will place Phumelela on the international map and have massive economic spin-off for the local and the neighbouring farmers, I'm referring to the commercial farmer, who will provide raw milk at an attractive price".

That's the end of background.

CHAIRPERSON: Yes. Thank you. So that is – that is part of what Mr Thabethe quoted as having been said by MEC Zwane at the time during

the – his budget vote?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Yes. Mr Moremi this presentation how was it presented to you? Did you get any perks to consider? How was it done on that day?

MR TEKOETSILE MOSES MOREMI: Chair let me explain that. When a council meeting is convened it will depend whether it will be a special council meeting or an ordinary council meeting. You will then have
10 items that are submitted to the speaker and the Mayor and then the agenda pack will then be distributed to all the councillors which was exactly what happened. But unfortunately this particular item was not in the – in the – in the pack that was distributed to the councillors. As I said the HOD just came with a delegation unfortunately it coincided with the date of the council and that presentation was then made. And I can confirm that I cannot recall even us having received the hard copy to that effect. It was just a visual power point presentation. So what I have summarised here is some of the silent or the most important aspects that we actually covered in the presentation. But it was not
20 part of the item or the pack that was given to all councillors before.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: And – but was it on the agenda this presentation?

MR TEKOETSILE MOSES MOREMI: It was never on the agenda Chair.

CHAIRPERSON: Ja.

MR TEKOETSILE MOSES MOREMI: I will indicate.

CHAIRPERSON: It was just accommodated?

MR TEKOETSILE MOSES MOREMI: It was just accommodated that is why you will see in one of the documents that when the council took that particular decision it was covered under Deputations and Interviews. You know normally when somebody comes and he makes the presentation – so that is exactly how it was covered because – but it was not part of the – of the agenda pack.

CHAIRPERSON: And this was a council meeting?

MR TEKOETSILE MOSES MOREMI: Ja it was a council meeting.

10 CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: In fact what happened is subsequent to the presentation those local farmers and business people they all left and then – then council had to then continue with its own business.

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: And that particular matter was flagged or captured.

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: Under Deputations and Interviews.

20 And there were resolution that were passed by council which were then supporting that particular project ja.

CHAIRPERSON: So – excuse me. So it would not be correct to describe that meeting as a community meeting? It was a council meeting to – which was attended by community members?

MR TEKOETSILE MOSES MOREMI: No Chair let me explain it like

that. There was a planned council meeting for that particular day. Remember Mr Thabethe and his delegation they just – because it was the first time that I saw them there. So they just came in but before the council meeting could start that is where in the same council chamber that is where this presentation was made. But those who were in attendance were the councillors because they were there you know for the council meeting. They were there, the local business people and the farmers so presentation was not made not in a formal council meeting. It was just like everybody there and then that is why after
10 that everybody left and the council continued.

CHAIRPERSON: So – so it might be correct to call it a community meeting which took place in the council chamber?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: Ja. Okay, okay.

MR TEKOETSILE MOSES MOREMI: Correct.

CHAIRPERSON: Alright.

ADV ZINHLE BUTHELEZI: Thank you. What bothered Mr Radebe is that there were certain resolutions that were taken in this meeting. In fact he – according to Mr Radebe these type of requests – I will refer
20 you to the relevant page. These type of requests ought to have been made formally. They ought to have been given packs before the meeting and this matter should have been on the agenda for consideration because following this meeting which he describes as the act as that the council meeting was hijacked by the Department of Agriculture and the MEC you made certain resolution. He attests this

document – you also attach in your affidavit. It is on page 8 of your original affidavit. Chair this was the document that was not very clear on Mr Radebe's bundle. I will swop that annexure with this one because this one is more clearer.

CHAIRPERSON: Yes but I think go back to what you are saying to Mr Moremi about what Mr Radebe said so that it is clear what you ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Whether you want him to respond to anything or what you are saying.

10 ADV ZINHLE BUTHELEZI: Thank you. Yes what I want you to – what I am saying to you Mr Moremi is that Mr Radebe said this – the Department of Agriculture and the MEC hijacked the council meeting and made this presentation. What do you say to that?

MR TEKOETSILE MOSES MOREMI: I am not going to use the word hijacked but as a councillor Mr Radebe was correct and as I have indicated that when there is a council meeting scheduled you need to have items, you need to attach everything all supporting documentations for each items and then you need to give the bundle to the councillors almost two days before the council meeting. So that is
20 exactly the normal operation of council but as I have indicated we were not aware of that particular presentation that would be made when we are even doing the agenda. So it just came in in the morning that is why the council meeting had to be a little delayed so that we could allow the presentation and then council to took place afterwards.

ADV ZINHLE BUTHELEZI: Yes. And why...

CHAIRPERSON: Well maybe – maybe hijack might not be accurate because we do not understand that the councillors were objecting or protesting. It looks like they had no problem with the Department of Agriculture making a presentation.

ADV ZINHLE BUTHELEZI: Understood Chair. I was just following from Mr Radebe's words.

CHAIRPERSON: Ja. No that is fine ja.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Okay.

10 MR TEKOETSILE MOSES MOREMI: Yes. My question to you Mr Moremi why did you allow this to happen? If the Department of Agriculture has not given you prior notice or made a formal request that they wanted to do this presentation to the council why did you allow this to happen?

MR TEKOETSILE MOSES MOREMI: Let me explain that the Municipality had 15 councillors. I just want to go a little bit back.

CHAIRPERSON: Yes.

20 MR TEKOETSILE MOSES MOREMI: The Municipality had 15 councillors and Councillor Radebe was a councillor that was representing the Democratic Alliance. But there were three councillors so it was him and the other two councillors. And they were all in attendance at that particular meeting. And I can confirm that all the councillors in actual – after having listened to the presentation including those two councillors of the DA were happy. It was just a normal concern that Mr Radebe raised but in the end the decision was

taken unanimously and it was recorded as such in the Minutes of Council. As to how we have allowed the presentations to take place it is a bit of a difficult question but as I have indicated that it was a request by the Department when they were there that they must do a presentation and remember I was also at [intervention].

CHAIRPERSON: You probably had no power to say anything.

MR TEKOETSILE MOSES MOREMI: I had no power to say no.

CHAIRPERSON: Ja so that is an unfair question to him.

MR TEKOETSILE MOSES MOREMI: Ja.

- 10 ADV ZINHLE BUTHELEZI: Thank you Chair. And could you please then give us what was resolved in that meeting, the meeting of the 12th. It is also recorded on page 8.

MR TEKOETSILE MOSES MOREMI: The resolutions – there were three resolutions.

1. Resolution 1 that council note the content of the reports on this item. That the project be accepted and supported. That the administration – this administration now is referring to me as an Accounting Officer and the team and the HOD of Department of Agriculture and Rural Development must then draft resolutions
20 that would then be adopted by council before the end of next week.

So it was under Deputations and Interviews and those were the resolutions. But obviously then the Department was then expected to then draft the resolutions that will then come properly so that it then becomes an item of the agenda for that particular meeting that took

place.

ADV ZINHLE BUTHELEZI: Thank you. Did that happen? Did you receive those resolutions?

MR TEKOETSILE MOSES MOREMI: Yes on the 21 June 2012.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: The HOD Peter Thabethe emailed those draft resolutions which were then incorporated into the agenda of the – the next meeting.

ADV ZINHLE BUTHELEZI: Is that the meeting of the 3 July?

10 MR TEKOETSILE MOSES MOREMI: The meeting of the 3 July ja.

CHAIRPERSON: Well let us talk about what you call the resolution that was taken on the 12th about this project. Was this resolution taken by the council now sitting as a council after the Department of Agriculture had left or was it – or was this a resolution of what may be can be called the community meeting, so who took that resolution? Was it the council sitting in a council meeting? Was it a resolution of those who were at this community meeting?

MR TEKOETSILE MOSES MOREMI: Chair the resolution was taken by the full council. As I said there were fourteen councillors who were in
20 attendance. After the community meeting everybody left then their meeting started. So it was a council decision taken during a formal council meeting on that particular day.

CHAIRPERSON: Yes. Now it strikes me as quite strange that the council should be so quick to make resolutions on something that – about which they have just received a presentation and no documents,

nothing but they quickly make a very important resolution without it seems from what I have read in your statement without really much of any questions from them. Without them looking at how viable this would be. Without them looking at what the financial implications could be for the Municipality in regard to this. Are you able to say anything to me? I am just concerned that this is quite strange they do not ask for time to consider it, reflect on it and say we will come back to you or anything like that. That seems very strange to me.

MR TEKOETSILE MOSES MOREMI: Chair you correct. You correct
10 because it was then resolutions that were taken based on the – the power point presentation that was made. And as I have indicated not even any councillors in that meeting even myself had a copy of that particular presentation. Ordinarily as I have said there should have been a formal request from the Department to the Municipality either to me as an Accounting Officer or to the Mayor through the MEC at that time where there was then background given and then there will then be this presentation and then we will then have some other reports like your Feasibility Studies and everything that we had done so that then
20 councillors could then apply their mind before a council meeting and go through that and then as a result take resolutions. But as I have said Chair it was resolutions taken just based on the presentation that was not done. That was done by that time.

CHAIRPERSON: Do you – do you know whether any councillors may have been involved in previous discussions or meetings with the Department of Agriculture or Mr Thabethe or Mr Zwane that gave them

– that may have given them enough information to be able to make this kind of decisions prior to this meeting? Do you know whether they may have been involved in any meetings where – which would have given them enough information to make such a decision at this meeting?

MR TEKOETSILE MOSES MOREMI: Chair I am of the view that the Mayor Mr Moyaung could have been aware of that particular meeting because people cannot just pitch in your territory and they come and make a presentation and there were even people that were invited before without that. So I – because if you – if you – you read under the
10 Deputation it says: The speaker gave the Mayor the platform while awaiting for the MEC to arrive to then welcome the delegation. So my assumption is that there may have been some discussions prior to that with the Mayor but I think it will be correct if the Mayor himself can confirm to that. But from that particular engagement it was not like something that is fairly new. But to me it was like a surprise because that is the first time that I started hearing about this particular project.

CHAIRPERSON: I know that you had been in the Municipality for a short time a year or just over a year but do you know whether the way that this matter was dealt with was the way other matters were dealt
20 with by the council. Was it normal for somebody to just come, make a presentation and a very serious decision is taken there and then without any proper discussions, reflection and consideration of implications for the council and where necessary without getting advice from appropriate professionals to assist the com – the council to make a decision. Do you know whether this was the norm or whether this

was not the norm?

MR TEKOETSILE MOSES MOREMI: Chair this – this cannot be the norm. I think I have indicated exactly what was supposed to have happened. This cannot be the norm. There should have been more information provided and engagements undertaken. Maybe after the – the presentation I do not – I think it was maybe too early but it was councillors that took a decision. It may have been too early for councillors to pronounce on that particular matter based on the presentation. I think ideally more information could have been properly
10 sourced so that there is a proper meeting with more information so that then council can then apply its mind. But ja based – it was definitely not an ordinary way in terms of how decisions are made by council.

CHAIRPERSON: Yes thank you.

ADV ZINHLE BUTHELEZI: You then deal with the resolution that followed after the draft resolution that you received. Please just take us to what was said in this resolution? I appears on page 14 of your original statement.

MR TEKOETSILE MOSES MOREMI: Page?

ADV ZINHLE BUTHELEZI: Page 14, 14. I would like you to read the
20 salient points to the record of that resolution? First of all where did you get this resolution – draft resolution from?

MR TEKOETSILE MOSES MOREMI: Chair this draft resolutions were prepared by the Department of Agriculture. I have indicated that I received an email from Peter Thebethe on the 21 June where this particular draft attached and then I printed it out.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: So it was resolutions that were developed and prepared by the Department of Agriculture for tabling to council.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: Can I go through/

ADV ZINHLE BUTHELEZI: Yes go through this – this draft resolution then was then tabled on the meeting you had on the 3 July, is that correct?

10 MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Yes. And would you please then go through the salient points of this draft resolution?

MR TEKOETSILE MOSES MOREMI: The heading there says: Vrede Integrated Dairy Agri Business Project. And then there is a resolution there of 3 July. The resolutions allowing the Department of Agriculture and Estina PTY Limited/Paras Dairy Company to use the Municipality land to develop a dairy production facilities in Phumelela local municipality Free State Province. The Department of Agriculture has requested that the Phumelela local Municipality adopt a resolution

20 allowing for the ownership and operations of a dairy production facility by Estina PTY Limited/Paras Dairy Company within the Municipality on agricultural land because doing so will promote and stimulate economic growth and development within the Municipality. And whereas the council believe it is in the best interest of Municipality and each citizen that dairy production facilities be allowed to be developed in Phumelela

by Estina PTY Limited/Paras Dairy Company and whereas the council take note that the Municipality will hold a stake of 4% shareholding in the business for the use of the Municipal land which will be used for the development of infrastructure of different forms in the Municipality. Now therefore be it resolved that for the purpose of this resolution the term Dairy Production Facility shall be defined as follows:

Dairy Production Facility means the land, structures and related equipment used for the housing and breeding and raising and feeding or milking dairy cows. The term includes within its meaning only such
10 agricultural land as is necessary for proper disposal of liquid and solid waste and for isolation of the facility to reasonably protect the confines cows from exposure to disease. Be it further resolved that for the purpose of this resolution the term Agricultural land shall be defined as follows:

Agricultural land means land suitable for use in farming. Be it further resolved that Estina PTY Limited/Paras Dairy Company are hereby permitted to use the 4400 hectares of agricultural land located in Phumelela Municipality for use in conjunction with a dairy production facility. Be it further resolved that this resolution is applicable to all
20 applicable laws. Be it further resolved that the Municipal Manager is directed and empowered to publish this resolution and this resolution shall take effect 30 days after the final publication unless a valid petition in opposition to the same is filed in accordance with the Municipal by-laws. In witness where of the above and [indistinct] going resolution was unanimously adopted on the 4th day of July 2012. That

is what this document reads.

ADV ZINHLE BUTHELEZI: Yes. And what then happened to this draft resolution? You tabled it on the 3 July? Was it adopted by the Municipality?

MR TEKOETSILE MOSES MOREMI: As an Accounting Officer by that time of the Municipality because if you – if you read there the first paragraph that says: The Department of Agriculture has requested that the Phumelela Municipality adopt a resolution allowing for the ownership and operation of a dairy facility by Estina PTY Limited.

10 ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: There is a process that must be followed by the Municipality especially when a Municipality wants to have business with a private company and they call it a Public Private Partnership. But in this instance there was mentioning of the word ownership so there is no way that a farm, a property of a Municipality could then just be transferred or even leased to or transferred to the private company Estina/Paras without that particular processes being followed. So in that particular meeting in my capacity as an Accounting Officer I then advised council not to adopt these particular resolutions?

20 I think there is council resolutions that were adopted.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And on the 26 June I then communicated to the then Head of Department Peter Thabethe about the resolutions that council had taken. A Municipality is not allowed to own shares in a private company so had I done that then I will have

compromised the Municipality and the community by giving away such an important asset to a private company. So I then advised council that we cannot adopt these draft resolutions as they are.

ADV ZINHLE BUTHELEZI: Yes and this draft resolution is talking of 4400 hectares. You have told us that the farmers were renting about 3300 I cannot remember the exact but about 3300 hectares a rough estimate. What does it – where does the 4400 come from?

MR TEKOETSILE MOSES MOREMI: As I have indicted this – ja the draft resolution that I received from the Department of Agriculture but
10 yes indeed that was not – because remember only 3368.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: Hectares of the 4439 were the ones that was actually being rented out by the Municipality so there was no way because when you talk about 4400 here it then included that the whole town of Vrede and Thembalihle would then be also given away. So – and remember now there are some housing development extensions that are taking place. Because then the moment you give the whole farm away I mean how will the Municipality then be able to do those expansions? So the 4400 hectares – but in the letter that I wrote
20 to the HOD.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: That date 26 July I did indicate to him that the correct hectares that may be made available for his is only 3368 not 4400.

ADV ZINHLE BUTHELEZI: Yes is that the letter that appears on the

next page, page 15 dated 6 July?

MR TEKOETSILE MOSES MOREMI: Correct.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Thank you. And you saying that these draft resolutions was then not adopted by the council?

MR TEKOETSILE MOSES MOREMI: No they were not adopted by council.

10 ADV ZINHLE BUTHELEZI: Thank you. And then what happened thereafter?

CHAIRPERSON: Well you referred to – you said on the 26 June you wrote to Mr Thebethe but I wonder whether you meant July because the meeting that you have been talking about was on the 3 July, is it not?

MR TEKOETSILE MOSES MOREMI: Oh correction Chair.

ADV ZINHLE BUTHELEZI: Yes Chair.

MR TEKOETSILE MOSES MOREMI: Ja it was on the 6 July when I was communicating the resolution of a councillor meeting of the 3 July.

CHAIRPERSON: Okay.

MR TEKOETSILE MOSES MOREMI: My apologies Chair.

20 CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Yes. Chair the letter is on page 15 of the bundle it is dated the 6 July.

CHAIRPERSON: I have got it. And I was concerned about what he said.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: And not what is in the letter.

ADV ZINHLE BUTHELEZI: Thank you so much Chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Would it then...

CHAIRPERSON: I am sorry while Ms Buthelezi is looking at that during the meeting of the 12 June was anything ever said why it was so urgent that council should make any decisions about this project? Why was everything being rushed like this?

MR TEKOETSILE MOSES MOREMI: Chair what I can recall and that
10 was also covered in the presentation is that apparently the Department or the delegation from the Department prior to that particular meeting of 12 June had apparently had a visit to India on the basis of the agreement that was signed between the government, the Free State government and the government of India where this particular engagements and everything were done and the urgency was therefore – because remember there was an expectation that there will then be money coming from – from abroad through Paras that will be invested. So I think the urgency there was all about you know having this particular project run. But Chair as to why there was such a pressure I
20 cannot – I think that is the little that I can actually confirm ja.

CHAIRPERSON: Yes. Well it is quite strange I think yesterday I heard evidence of how the according to the ...

ADV ZINHLE BUTHELEZI: Ms Fourie.

CHAIRPERSON: Ms Fourie was Deputy Director General in the Department of the Provincial Treasury at the time how the CFO of the

Department of Agriculture was pressurising them to issue a handwritten cheque for R30 million and it was not clear why there was such an urgency. It was a Friday afternoon and she according to Ms Fourie wanted that cheque now, now or latest the following morning which was a Saturday. And it is not clear why there was such urgency. So here in regard to this meeting on the 12 June again there is a council meeting scheduled with its own agenda. People from the Department of Agriculture come in, they are not on the agenda from what you have told me. They are allowed to come in, make a presentation. After that

10 same meeting, same day the council makes very important decision to go along with this project and it makes one wonder why – what was so urgent about things relating to this project? But you have said what you know in terms of that meeting of the 12th.

MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: Ja okay.

ADV ZINHLE BUTHELEZI: Thank you. Mr Moremi then on paragraph 9 of your original affidavit you talk about the meeting that was arranged for the 17 July the meeting that was arranged by the Mayor Mr Motaung that took place at – that took place at the Municipal premises. Could

20 you please take us through that meeting? It is on page 4 of your original affidavit.

MR TEKOETSILE MOSES MOREMI: Chair if you may allow? Let me just bring it in more perspective.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And on record in terms

of exactly what happened. I can still recall exactly what happened. On the 17 July 2012 I – I was driving to the office it was just around before eight o'clock on that day. I then received a call from the Director General then in the office of the Premier Ma'am Elsebe Rockman. She was the Director General at that time. What she said to me is that Mr Moremi I just want to make you aware that there will be a delegation from India who are interested in investing in Vrede that will be coming to have a meeting with you and the Mayor. In the event that there is a need for – for you in terms of needing some legal advice because

10 remember Phumelele is a very small Municipality, low revenue base. Although it is supposed to pay for its own costs. In the event that there is a need for legal advice do not go to private lawyers, pay a lot of money, inform me then I will make it a point that I refer this matter to the state law advisors. When I say State Law Advisors I am referring to Mr Venter and Ms A (unclear). So that is exactly what the - what the DG actually then told me to do and he has indeed. The - the delegation arrived on that particular day. It was not a big delegation.

It was a - a gentleman by the name of Ashok Narayan. It was Ashok Narayan and he was accompanied by the lawyer Mr Schalkwyk.

20 So those were the two that came. I - I believe that Ashok Narayan was the one who was actually representing the - the investors that are coming to partner with the - with the - with the department. So ...

ADV ZINHLE BUTHELEZI: So did you know this Mr Ashok Narayan? Was it the first time you saw him on that day?

MR TEKOETSILE MOSES MOREMI: No. It was the first time that I saw

him that day. The same as Mr Schalkwyk. So those were the two faces that I saw for the first time that date, ja.

ADV ZINHLE BUTHELEZI: Yes because we have had the evidence of Mr Venter that Mr Narayan was the advisor to the former Premier Mr Ace Magashule. He was appointed in February 2012.

MR TEKOETSILE MOSES MOREMI: I was not aware of that particular one Chair.

ADV ZINHLE BUTHELEZI: Yes then proceed.

MR TEKOETSILE MOSES MOREMI: Hm.

10 CHAIRPERSON: Well I see that in paragraph 9 of your statement Mr Narayan Ashok or Ashok Narayan and Mr van - and Mr Johan Schalkwyk are said to have been representatives of a new venture called Zayna Investments (Pty) Ltd.

MR TEKOETSILE MOSES MOREMI: I - I will come to that Chair.

CHAIRPERSON: Is - is that ...? Okay.

MR TEKOETSILE MOSES MOREMI: Ja. (Intervenens).

CHAIRPERSON: Yes and then you talk about a local businessman.

MR TEKOETSILE MOSES MOREMI: Ja.

CHAIRPERSON: Okay.

20 MR TEKOETSILE MOSES MOREMI: Chair I am - I am trying to get hold of this - of the agreement. I think it is 18.

CHAIRPERSON: She will help you where to find it. If you have not found it.

MR TEKOETSILE MOSES MOREMI: It is page 18. That is the agreement of lease entered into between the Phumelela Local

Municipality and Zayna Investments (Pty) Ltd.

CHAIRPERSON: Oh okay. I am sorry.

MR TEKOETSILE MOSES MOREMI: Ja.

CHAIRPERSON: I think you must bring the mic a little closer to you.

MR TEKOETSILE MOSES MOREMI: Okay.

CHAIRPERSON: Not too close but just a little bit closer. Yes.

MR TEKOETSILE MOSES MOREMI: Okay.

CHAIRPERSON: That should be okay, ja.

MR TEKOETSILE MOSES MOREMI: Ja. It is a - an agreement of lease
10 which was prepared which the Phumelela Local Municipality and Zayna
Investments (Pty) Ltd t/a Mohuma Mobung Dairy Project. So that was
the agreement that the - the lawyer Mr Schalkwyk had and it was
brought to me for me to sign it and in that meeting then the - the Major
Mr Motaung was there as well in that meeting ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And then a local businessman
called Oupa Frans Mokoena. Oupa Frans Mokoena is just a local
businessman who was also part of the - the community when there was
a presentation done on the 12th. So he was there. So he just - both of
20 them joined the meeting but none of them said a single word because it
was me then who was engaging both Ashok and Schalkwyk ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: About the content of this
agreement.

ADV ZINHLE BUTHELEZI: Who was Oupa Mokoena representing in

this meeting? What was his role in this meeting?

MR TEKOETSILE MOSES MOREMI: As I said he is just a local businessman. So he was just there. He was not representing anybody else in that meeting.

ADV ZINHLE BUTHELEZI: Why was he in this meeting? Who invited him?

MR TEKOETSILE MOSES MOREMI: He just came with the Mayor. So and then they both joined me but as I said ...

CHAIRPERSON: Ja.

10 MR TEKOETSILE MOSES MOREMI: There is little that he actually said.

CHAIRPERSON: Ja.

MR TEKOETSILE MOSES MOREMI: Ja, but he is - he is a businessman that - that we all know in that (intervenes).

CHAIRPERSON: He obviously had an interest ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: Ja.

CHAIRPERSON: In the topic.

MR TEKOETSILE MOSES MOREMI: Ja.

20 CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: Yes and then what happened? This agreement came - was it came prepared by Mr Schalkwyk and Mr Narayan - Narayan?

MR TEKOETSILE MOSES MOREMI: Ja. As - as I indicated ...

CHAIRPERSON: Had you seen it before this meeting - this agreement?

Had you seen this agreement before this meeting?

MR TEKOETSILE MOSES MOREMI: No. That was the first time.

CHAIRPERSON: Yes, for the first time.

MR TEKOETSILE MOSES MOREMI: They - they brought it in hard copy for the first time.

CHAIRPERSON: Yes, okay.

MR TEKOETSILE MOSES MOREMI: The - the intention thereof was for me to then sign it on behalf of the municipality so that they can then take back and then have the other people sign there afterwards. So
10 what I did I requested that I be given an opportunity. Go through this particular contract which - which they allowed and I - I did and when I was going through this particular agreement I think it is page 20, ja.

That agreement spoke about the four percent shares - ordinary shares that will be issued to the municipality. The municipality was going to be the lessee and then there was a shareholders agreement. That clause I was not happy about it because it says:

“A shareholders agreement to be concluded between the lessor and the lessee within three years after the effective date.”

20 So I mean you cannot sign an agreement now but then you only have a shareholders agreement after three years. So I was - I was not happy with that particular clause.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: I was also not happy with Clause 3.1.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: Which said:

“This lease is for a period of 99 years commencing on the effective date and terminating on 99 years.”

I have just had an experience of another 99 years that were cancelled in 2011. Now here comes another 99 years. So I was not happy with this particular paragraph as well ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And 3.2 which says:

10 “The lessee shall have the right to renew the lease period for a further term to be mutually agreed upon in writing by the lessor and the lessee prior to the expiry of the period referred to above.”

I was also not happy with paragraph 4.1 which said:

“There shall be no monthly rental payable by the lessee to the lessor.”

4.2:

“The lessor will receive shares in the lease as being the agreed upon rental for the period.”

20 So there was no indications of rental being paid. So there was no way that I could - and:

“The shares will not be transferrable.”

So those were - those were - and then 4.5 was also a concern to me because it says:

“The lessor will only be entitled for the payment of

dividends in the lessee after the lease become profitable."

So this is a new entity. It might be profitable after 10 years. So you cannot just be given - you will get dividends when the - when the entity becomes profitable. So those are some of the concerns that I raised with both Narayan and Van Schalkwyk.

ADV ZINHLE BUTHELEZI: Van Schalkwyk - Van Schalkwyk.

CHAIRPERSON: Well this is quite strange and quite concerning. At the meeting of 12 June was the name of this entity that was now going
10 to be a lessee ever mentioned?

MR TEKOETSILE MOSES MOREMI: Not at all Chair. That time we were only aware of Estina/Paras (intervenes).

CHAIRPERSON: Paras. So on the - this is now what? On the 17th?

MR TEKOETSILE MOSES MOREMI: 17 July.

CHAIRPERSON: Of July. You are in a meeting with Mr Schalkwyk who is a lawyer it seems for this entity - Zayna ...

MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: And Mr Narayan, Ashok or Ashok Narayan who appears to represent this entity.

20 MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: You have never heard about them before? I do not know if you heard about Narayan before (intervenes).

MR TEKOETSILE MOSES MOREMI: No as I said

CHAIRPERSON: You never heard about them?

MR TEKOETSILE MOSES MOREMI: No. I have never heard about

them.

CHAIRPERSON: They come to you.

MR TEKOETSILE MOSES MOREMI: Chair.

CHAIRPERSON: You are the accounting officer. They already have an agreement that has been prepared without your involvement, without any discussion and they expect you to just sign and they are coming with the Mayor. What is the Mayor saying in all of this?

MR TEKOETSILE MOSES MOREMI: No. In that particular meeting Chair I - I did indicate to the Mayor that he must allow me as an
10 accounting officer to interrogate this. So I did not want anybody else to say no sign it. We will take it further. So I said I am an accounting officer. Let me apply my mind on this particular thing. So the Mayor was there but I was very decisive.

CHAIRPERSON: But what I am concerned also about the fact that the Mayor should know that you do not know anything about this entity. You do not know anything about an agreement that is to be signed with this entity and he brings somebody into a meeting where the expectation from this person is that you should sign and this is the kind of thing that I would have thought that the Major would have wanted to
20 know himself and maybe he knew you are the one who just did not know ...

MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: But one would have thought that if he knew enough about this entity prior to this meeting he would have had a meeting with you ...

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: To brief you and tell you what was going on.

ADV ZINHLE BUTHELEZI:

MR TEKOETSILE MOSES MOREMI: Correct Chair. In fact the - the expectation was that I must sign as an accounting officer and then I shall not worry. The Mayor will then take it to council. So I said no. It does not work like that. I cannot send an agreement - the Mayor does not represent council. So I cannot send an agreement. So I am not going to sign it and then I made a copy.

10 I said now go back with the original. Then that is where then I - because there was an undertaking from the Director-General that if I need any legal assistance I must consult with her. Then that is where I said no. I left to - to go and then at least then get an opinion on this particular - but even before requesting for an opinion as an accounting officer with those particular provisions or clauses it was straightforward that that agreement was not any agreement that the - that I could have signed on behalf of the municipality.

CHAIRPERSON: But this meeting the way it happened was there an arrangement in advance that there would be this meeting and what it
20 was to deal with that you knew about or did these people just rock up with the Mayor and said let us have a meeting?

MR TEKOETSILE MOSES MOREMI: Chair let me explain like that. They - they came because I was just in the office - just arrived in the office. They came and then just almost four/five minutes then the Mayor came. So - came and then be part of the meeting. So it is not

me then who went to the Mayor and said can you come and be part of the meeting.

So they came with this particular agreement then the Mayor joined me but absolutely I was not aware of this particular meeting. I was not aware of this particular contract. What clicked in my mind ...

CHAIRPERSON: So you had no scheduled meeting with these people?

MR TEKOETSILE MOSES MOREMI: No. It was not a scheduled meeting with this meeting.

CHAIRPERSON: They disrupted your plan for the day.

10 MR TEKOETSILE MOSES MOREMI: Ja. As I said i was lucky enough because driving to the office i then was - got the call from the Director General that there is this delegation. Besides that I had no clue anything about people that will be coming to my office. I was just going there in my office just to go and do my job, ja.

CHAIRPERSON: Ja. It is - it is just concerning that the Mayor seems to be party to this expectation that people can just come to the accounting officer with an agreement with an agreement and the expectations that you must read it now and sign or something like this. Yes, anyway you asked for time and you were given time to look at it
20 but even that I mean I would have said you people go away.

If you have any request that I consider this we will arrange another meeting. Leave the - leave the agreement. I would have sent them away.

MR TEKOETSILE MOSES MOREMI: Yes.

ADV ZINHLE BUTHELEZI: But you did not sign this - this agreement

Mr Moremi?

MR TEKOETSILE MOSES MOREMI: No, no I did not sign it.

ADV ZINHLE BUTHELEZI: Yes. Tell us about the events that followed. In your supplementary affidavit/statement you talk about the emails that you received from Mr Narayan and Mr Schalkwyk. It appears on paragraph 9 of your supplementary statement. It is on page 3. I am sorry Chair. They have - they have numbered it starting from number one. So it is on page 3 of the supplementary statement.

CHAIRPERSON: Okay.

10 MR TEKOETSILE MOSES MOREMI: Okay. Alright. Ja, as and when I was raising my concerns on some of the clauses or this particular agreement.

CHAIRPERSON: How much time did you get to go through it more or less?

MR TEKOETSILE MOSES MOREMI: Chair that was just a quick ...

CHAIRPERSON: It was just a quick look.

MR TEKOETSILE MOSES MOREMI: A quick ja. That is why I was just going - I did not go through this.

CHAIRPERSON: Oh.

20 MR TEKOETSILE MOSES MOREMI: So I just quickly.

CHAIRPERSON: You picked up concerns.

MR TEKOETSILE MOSES MOREMI: But as and when I am picking up those concerns I - I was raising them.

CHAIRPERSON: Oh. They were sitting in front of you as you were ...?

MR TEKOETSILE MOSES MOREMI: They were sitting in front of me,

ja.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And as I was raising them
Mr Narayan, Ashok ...

ADV ZINHLE BUTHELEZI: Hm.

MR TEKOETSILE MOSES MOREMI: Was actually making notes of
those issues that I was raising. So he was actually making note. After
the meeting he said no it is fine. I will go back and discuss the
10 concerns that we have on this agreement with the stakeholders. I did
not know who the stakeholders were but then on 18 July the following
day I then received an email from Mr Ashok.

ADV ZINHLE BUTHELEZI: Yes. That email will appear on page 37 in
the middle of that page. It is the one that is printed in black
Chairperson.

MR TEKOETSILE MOSES MOREMI: Page?

ADV ZINHLE BUTHELEZI: 37. It is just the back of this document. It
is right at the back. Behind - behind the (intervenes).

CHAIRPERSON: Ms Buthelezi.

20 MR TEKOETSILE MOSES MOREMI: Oh, oh yes. Okay. Sorry, sorry
Chair.

CHAIRPERSON: Okay, alright.

MR TEKOETSILE MOSES MOREMI: Ja.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Sorry Chair. I am misleading the witness.

CHAIRPERSON: Ja. I think if you say the page number that should suffice.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Ja.

ADV ZINHLE BUTHELEZI: Thank you.

MR TEKOETSILE MOSES MOREMI: Chair if you allow. Can I - can I read this particular email for the record?

CHAIRPERSON: Yes, yes.

ADV ZINHLE BUTHELEZI: Yes.

10 MR TEKOETSILE MOSES MOREMI: It was an email from Ashok Narayan. I received it on 18 July 02:14 I think. 14 minutes past two in the afternoon and it reads as follows:

“Dear Sir ...”

It was addressed to me and then Mr Johan was copied there. I do not know is this Walemsa (?). There was another person that was also copied there in this particular email and it says:

“Clarifications on lease agreement issues.”

He says:

20 “Many thanks to yourself and the Mayor for the time spent with us to discuss the proposed lease agreement.”

CHAIRPERSON: I am sorry. I thought Ms Buthelezi said page 37.

ADV ZINHLE BUTHELEZI: Yes. Page 37 of the supplementary affidavit/statement.

CHAIRPERSON: Well are there two pages 37?

ADV ZINHLE BUTHELEZI: Yes there is one ...

CHAIRPERSON: In the whole pack?

ADV ZINHLE BUTHELEZI: There is one from the original statement. They then paginated the supplementary statement from page 1. Maybe they should have continued.

CHAIRPERSON: Ja. You see this is going to cause confusion.

ADV ZINHLE BUTHELEZI: I understand Chair.

CHAIRPERSON: Why did they - if it was going to be in the same file why did they have to start a new numbering?

10 ADV ZINHLE BUTHELEZI: I am sorry Chair. We received this this morning it was very late for us even to rectify it.

CHAIRPERSON: And the problem is that once we ...

ADV ZINHLE BUTHELEZI: Hm.

CHAIRPERSON: Once the witness deals with it on the basis of a certain numbering if you change it later ...

ADV ZINHLE BUTHELEZI: Hm.

CHAIRPERSON: It will not - it will not accord when one reads the transcript.

20 ADV ZINHLE BUTHELEZI: Chair if I may just take five minutes. I can do it by hand just to avoid confusion ...

CHAIRPERSON: Hm.

ADV ZINHLE BUTHELEZI: And continue because it is not a lot of pages.

CHAIRPERSON: Ja, okay.

ADV ZINHLE BUTHELEZI: Thanks.

CHAIRPERSON: Let us rather do - do that.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: I am sorry Mr Moremi. This needs to be sorted out so that we do not have problems.

ADV ZINHLE BUTHELEZI: Thank you.

MR TEKOETSILE MOSES MOREMI: (Indistinct).

CHAIRPERSON: We will adjourn for five minutes. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

10 INQUIRY RESUMES

CHAIRPERSON: Okay so what's the page number?

ADV LEAH GCABASHE SC: Thank you, we are indebted Chairperson, it's on page 98 that is written in black now, the fourth last page.

CHAIRPERSON: Okay I've got it.

ADV LEAH GCABASHE SC: Thank you.

CHAIRPERSON: Okay I think he must start afresh about identifying the email now that it's – we know which page it is on.

20 ADV LAHR GCABASHE SC: Thank you, Mr Moremi there is the email you received from Mr Narayan, (name spelt) you got this email on the 18th of July at 2h14PM, is that correct?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Yes and you wanted to read this email to the record?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Please go ahead.

MR TEKOETSILE MOSES MOREMI: The subject there is, "clarifications on lease agreement issues", then it reads as follows,

"Dear sir, many thanks to yourself and the Mayor for the time spent with us to discuss the proposed lease agreement yesterday. A few points that were brought to the table yesterday and which I would like to clarify after having discussed with the stakeholders

- 10 1). the shares being issued to all shareholders, including the Municipality entity will be ordinary shares and not preference shares.
- 2). The shares will be held in a Trust by the shareholders of (indistinct) of the Municipality till such time as the Municipal entity is formed.
- 3). The four percent was calculated based on the available shares after allocations to the BEE beneficiaries and was not based on any commercial value.
- 4). On the rates and taxes this should be paid for by the Municipality as the owner of the property. The Municipality is getting a four percent stake in the business in lieu of rentals.
- 20 5). The lease is being contemplated as a rent-free lease.
- 6). The term of the lease should be 99 years.
- 7). If possible the Municipality should try and relocate the exiting tenants instead of transferring the lease to Zana Investments.

Regards, Ashok.

ADV ZINHLE BUTHELEZI: Yes, upon receiving this email, what then did you do?

MR TEKOETSILE MOSES MOREMI: My reply is on page number – it starts from page 97.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Before you go to your reply, just to go back to the meeting of the 12th as well as the meeting of the 3rd of July – 12th of June and 3rd of July. So the council was making the decisions that it was making on the 12th of June and on the 3rd of July in circumstances
10 where there were leases in existence affecting the same farm, relating to, I think, did you say, four farmers or were those leases no longer there?

MR TEKOETSILE MOSES MOREMI: Those leases were still in existence, let me just get my mind correctly Chair.

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: The – I know that there was engagement – ja no because that was in 2013 the engagement with the farmers ja. On the 12th of June and the 9th of July council took that decisions while the farm was still being leased to the four farmers
20 because the contract of the four farmers was expiring on the 30th of September 2013 Chair.

CHAIRPERSON: Yes so they made – they rushed to make all these decisions in circumstances where, actually even if they wanted to go along with the project they would have had to first sort out issues with the existing tenants?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: And this was never discussed at the meeting – at the two meetings as to how can we make these decisions before we sort issues out with the existing tenants, that was – or was it discussed?

MR TEKOETSILE MOSES MOREMI: Chair, if I'm correct, in the letter that I addressed to Mr Thabethe on the 26th and 3rd of July - I just want to check where those letters are here.

ADV ZINHLE BUTHELEZI: The letter for the – you address on the 26th of June, it should be on page 9.

10 MR TEKOETSILE MOSES MOREMI: Of the original?

ADV ZINHLE BUTHELEZI: Yes of – in fact we only have one page 9 now, page 9.

MR TEKOETSILE MOSES MOREMI: Yes Chair, I wrote that letter because I was communicating the status quo at that time and Chair if you may allow I can quickly read it for record?

CHAIRPERSON: Well you don't need to read the whole letter, you can just make the point or read a particular portion that relates to the point you want to make and remember that, my question relates to what the position was as at the 12th of June 2012 as well as at the – I think you
20 said 3rd of July that meeting whether, in those meetings anybody said, but how can we make these decisions as council when there are tenants and we haven't talked to them as to what we are going to do because we have obligations in terms of the leases with those tenants.

ADV ZINHLE BUTHELEZI: Yes, maybe you should start where, on the third paragraph you said, "I must indicate that this farm".

MR TEKOETSILE MOSES MOREMI: Yes Chair I said,

“I must indicate that this farm, exactly what you are saying Chair, I must indicate that this farm is currently leased to the following local farmers and the lease agreements commenced on the 1st of October 2011 and expires on the 30th of September”.

Then I’ve mentioned those four farmers, here I was indicating that while we are in this process, let it be noted that there is still an existing agreement with the farmers and the Municipality.

10 CHAIRPERSON: But I understand what you are saying on the 26th of July, I’m asking whether somebody at the council meeting of the 12th of June or that of the 3rd of July, ever said, how can we make these resolutions of making this farm available to somebody else when, at the moment we have tenants on the farm and we have obligations.

MR TEKOETSILE MOSES MOREMI: Chair as far as I know that was not done because if that was done, then it would have been captured in the resolution of the meeting of the 12th of June, so it was not there so nothing was actually mentioned that time that there is actually farmers who are in this particular farm.

20 CHAIRPERSON: And as I understand the position, certainly at the meeting of the 12th, it was mentioned that there were tenants on the farm, somebody, whoever mentioned that, so all the councillors were aware of it or were they not?

MR TEKOETSILE MOSES MOREMI: They were aware Chair correct.

CHAIRPERSON: That there were tenants?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: But they go ahead and make these decisions with no regard to how this would be done at a practical level and whether it would be legal?

MR TEKOETSILE MOSES MOREMI: You're correct Chair.

CHAIRPERSON: And I go back to the question, what was the rush?

MR TEKOETSILE MOSES MOREMI: No you're correct Chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Thank you. The upon receiving this email
10 fro Mr Narayan on the 18th of July, what did you do?

MR TEKOETSILE MOSES MOREMI: The same date, on the 18th of July, it was around eighteen minutes past four, roughly an hour and a half, just after I had received his email 3h03PM, 18 July, I said,

20 "Hello Ashok, that's from page 97 to page 98, hello Ashok I take note of your feedback from the stakeholders summarised below. I also want to inform you that I have requested the State Law Advisors and National Treasury to give us opinions on both, legal and compliance aspect of the proposed lease agreement. I have copied both the National Treasury and the State Law Advisor representative to take note of clarity provided below by the stakeholders, and I'm sure they will take that into cognisance while formulating a formal advice to Phumelela".

ADV ZINHLE BUTHELEZI: Yes I could see that on the very same day you also copied Ms Rockman.

MR TEKOETSILE MOSES MOREMI: Correct.

ADV ZINHLE BUTHELEZI: Tell me, Ms Rockman was this the first time that you had communicated with her with regards to a particular project or was it someone that you normally spoke to with?

MR TEKOETSILE MOSES MOREMI: As I've said, my conversation with Ms Rockman was specifically on that date of the 17th of July when she then informed me that there'll be this delegation coming. So the emails and everything which was sending to the State Law Advisors I was copying her as well because in the same page 97, even though she did
10 not reply, she replied – oh it was on the 18th as well.

ADV ZINHLE BUTHELEZI: Yes but late in the afternoon.

MR TEKOETSILE MOSES MOREMI: Yes late in the afternoon she said,

“Just got back from Thabantsho where were doing some work at [indistinct] intermediary schools for Mandela Day, I personally doubt whether you'll be able to justify a rent-free 99 year lease agreement and be responsible for...[intervention].

CHAIRPERSON: I'm sorry where are you reading from now?

MR TEKOETSILE MOSES MOREMI: Page 97.

20 ADV ZINHLE BUTHELEZI: Page 97 on top.

CHAIRPERSON: Still 97 okay.

MR TEKOETSILE MOSES MOREMI:

“I personally doubt whether you'll be able to justify a rent-free 99 year lease agreement and be responsible for payments of rates and taxes. While the Municipality is allocated four

percent shares, which is not based on commercial value while at the same time losing a guaranteed income from the current lease agreement. Let's see what National Treasury and the State Law Advisors advise".

So that's her response in what Mr Narayan has covered in the email below.

CHAIRPERSON: As at this – as at the 17th of July when you got this delegation that rocked up at your office without any prior arrangement and you heard for the first time about this entity, Zana, did you assume
10 that this Zana represented Paras or was a Paras entity or did you say where does Zana come in here now, we've been told of Estina and Paras, what's going on?

MR TEKOETSILE MOSES MOREMI: Chair I must be honest, I did not answer that but you are correct that from the 12th of June, because that was a month after, we were all talking about Estina and Paras so as to how then the new entity was then established, because if you read the agreement it says, Zana Investment trading as Mahoma-Mobung, so as to how that...[intervention].

CHAIRPERSON: Yes two names you know nothing about?

20 MR TEKOETSILE MOSES MOREMI: Two names I know nothing about Chair.

CHAIRPERSON: But the Mayor also, on the 12th of – on the 17th of July doesn't say – tell you anything about the connection between – if there's any between this Zana and Estina and Paras?

MR TEKOETSILE MOSES MOREMI: No he said nothing Chair.

CHAIRPERSON: Yes and up to now nobody had explained that connection as at the date of this email, 18 July 2012?

MR TEKOETSILE MOSES MOREMI: No nothing Chair, except the fact that as time goes on that's where then Estina came afterwards, so I don't know exactly what happened to the disappearance of Zana, but subsequent to that then it was then Estina Dairy.

CHAIRPERSON: Yes but basically on the agreement that was presented to you for signature by Mr Narayan and Mr Schalkwyk they wanted you to make the land available to them for 99 years.

10 MR TEKOETSILE MOSES MOREMI: Correct Chair

CHAIRPERSON: They didn't want to pay any rent?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: They wanted the Municipality to pay the taxes and rates?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: They called that a lease, a lease without rent?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: I've never heard of anything like that and they basically wanted to use this land for free for 99 years and even with
20 regard to the four percent shares, they were saying, you know, the Municipality will get them when – dividends when there is profit, wherever that is, whenever that will be, that's what they presented to you?

MR TEKOETSILE MOSES MOREMI: You're correct Chair.

CHAIRPERSON: And of course you picked up all of these things?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

CHAIRPERSON: What you didn't say in regard to the meeting on the 17th is, what was the attitude of the Mayor himself, when you raised these concerns, did he – did he get surprised that this is what was being presented to you, did it look like he was not surprised, he knew, he had looked at the lease, he knew about this, there was no problem as far as he was concerned or is the position that you couldn't tell what his reaction was?

MR TEKOETSILE MOSES MOREMI: At that time Chair I was sitting
10 like this and Mr Narayan and Schalkwyk were like facing me there, the Mayor was just next – but remember as I said, I indicated it in the beginning that, Mayor may you please allow me to engage the contract and then also present, so I did not expect even anybody else who can say do this because that was a very serious decision that I were to take, so I had to apply my mind thoroughly so he was sitting next to me. Unfortunately, I didn't look in terms of exactly the face whatever...[intervention].

CHAIRPERSON: You couldn't see ja.

MR TEKOETSILE MOSES MOREMI: Yes but he was part of that
20 meeting.

CHAIRPERSON: But did he – after the meeting or at any time over the next few days, talk to you and say – say anything like, I was shocked that these people – this is what these people want to do or anything like that?

MR TEKOETSILE MOSES MOREMI: No, what he said Chair, is that,

he actually appreciate the braveness that I displayed and the fact that I refused to sign the agreements but then giving reasons why, so that's what we discussed afterwards ja.

CHAIRPERSON: So he expressed appreciation.

MR TEKOETSILE MOSES MOREMI: Yes expressed appreciation for my braveness.

CHAIRPERSON: Okay, thank you.

ADV ZINHLE BUTHELEZI: Thank you, before the – I wanted to understand your communication with Ms Rockman before the 17th of
10 July 2012, have you ever had any form of communication with Ms Rockman?

MR TEKOETSILE MOSES MOREMI: Not at all Chair.

ADV ZINHLE BUTHELEZI: So this was your first time you spoke with her?

MR TEKOETSILE MOSES MOREMI: Yes that call that he made in the morning, that was the first time.

ADV ZINHLE BUTHELEZI: Thank you. Then – let's then move to whether the advice that you got from the State Law Advisors, just summarise, you don't have to read it, the whole of it, because Mr
20 Venter has already dealt with it, it appears on page 39.

CHAIRPERSON: So you can just say the gist of the advice was, A, B, C, D.

MR TEKOETSILE MOSES MOREMI: Ja I think in a nutshell the advice from the State Law Advisors, they were actually in agreement with me that the issues that I raised, those clauses in the agreement were

correct but then they went further and [inaudible – mic turned off], specific provisions in the legislations, specifically that talks about the Systems Act that talks about if there was going to be an agreement, the process that must be followed. So in a nutshell, they actually agreed with my thinking and reasoning and it was on that basis that they advised me not to sign that particular agreement.

ADV ZINHLE BUTHELEZI: Yes, in that you couldn't – as a Municipality you were not allowed to hold shares with – on a private company?

10 MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Thank you, and following the advice that you received, you deal with – the advice that you received from Mr Venter, after he had a meeting with MEC Zwane and the HOD on the 1st of August 2012, please take us through that advice, you also don't need to read the whole thing but what you understood that advice to be saying.

MR TEKOETSILE MOSES MOREMI: Chair from what I've observed then it appears that immediately after I had received that legal opinion from Advocate Ditira on the 23rd of July there were then some
20 engagements now between the Department and Mr Venter who was actually more senior at that particular time and it then culminated into what then he had to tick and amplify some of the conditions or some of the clauses in the legal opinion of Advocate Ditira and I must mention that subsequent to that particular legal opinion of Mr Venter there was then a proper, so to say, lease agreement that was entered into

between the Municipality and the Department that is the agreement that was also prepared with the assistance of the State Law Advisors and what I did, I then took all these two legal opinions plus that particular agreement to council so that then council can then give me a fresh mandate and allow me to sign this particular agreement and there was a resolution to that particular effect. That agreement was basically in the best interest of the Municipality because it was very clear that the Department is taking over the existing agreements of these four farmers and they are now making an undertaking that they will then pay
10 whatever that I was getting from those particular farmers and what was supposed to happen is, subsequent to the 30th of September 2013, we were then supposed to have then entered into another agreement with the Department for a particular period to be determined and the rental thereof because the Department was saying every year there will then be some escalation so at least there's more benefit to the Municipality but I must indicate that we never had any agreement or addendum that extended that particular period except the contract that, at a later stage I will refer to, which was signed on the 12th of December 2012.

ADV ZINHLE BUTHELEZI: Yes so the agreement that you signed, is
20 the one that is appearing on page 47, it was the agreement between the Free State Provincial Government and the Municipality?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Yes, and in terms of that agreement you then – you had one year lease – you were leasing the land for a year to the Municipality – sorry to the Provincial Government?

MR TEKOETSILE MOSES MOREMI: That agreement, when I signed it, it was on the 12th of September 2012 so remember there was already an existing agreement with the farmers which started from the 1st of October 2011, so what it says, it was just that the Department is then taking over that particular – because what happened Chair, which I must also indicate is that, there was an engagement with the four farmers subsequently where then – and the Department of Agriculture was the one that determined – was then leading that particular delegation where then the farmers were then requested, because of the
10 urgency of this particular project and say, we cannot allow the contract to continue up until the 30th of September because we need to establish this particular agreement. So the farmers were then, after those engagements, they had to then bring back the 30th of September to the end of February but because they had already occurred costs on the land and all these things...[intervention].

CHAIRPERSON: I mean, take it to February the following year?

MR TEKOETSILE MOSES MOREMI: 2013, correct Chair.

CHAIRPERSON: Okay.

MR TEKOETSILE MOSES MOREMI: Because there were already costs
20 that they had incurred there was then an agreement that the Department of Agriculture would then reimburse them over and above paying the Municipality R1million ja. So that contract which I signed on the 12th was only for a year up until 30th of September 2013.

ADV ZINHLE BUTHELEZI: Yes were you paid by the Provincial Government?

MR TEKOETSILE MOSES MOREMI: No I – we did not get payment, remember as I said that the payment from the farmers were paid twice a year which was March and September. We did not get the money from the Department by then, there was a letter that I wrote to the HOD of Agriculture, I think it was around the 15th of March wherein I reminded him that remember we've signed an agreement you've undertaken to pay the Municipality but I said...[intervention].

CHAIRPERSON: This is now 2013?

MR TEKOETSILE MOSES MOREMI: 2013 – March 2013.

- 10 CHAIRPERSON: Okay for 2012, the four farmers continued to pay and paid for the whole year?

MR TEKOETSILE MOSES MOREMI: Correct Chair, up until end of February.

CHAIRPERSON: Of 2012?

MR TEKOETSILE MOSES MOREMI: 2013.

CHAIRPERSON: Oh 2013, so for 2012, the farmers paid...[intervention].

MR TEKOETSILE MOSES MOREMI: no for 2012 they had already paid in full ja.

- 20 CHAIRPERSON: Okay alright and then the Department had to start paying in March of 2013?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: Okay.

MR TEKOETSILE MOSES MOREMI: But that never happened, there was no payment that was made. I had a number of engagements

because Chair I later then became the Chief Financial Officer and then there was another new Municipal Manager who was appointed but there was also a letter that I prepared myself as the CFO dated 9 September 2013 which was signed by this new MM where I also indicated to the HOD that, it is now September which is almost the end of the contract and we have not yet received the payment and then I attached the invoice that...[intervention].

CHAIRPERSON: Let's get the dates first right of when you ceased to be with the Municipality and you joined Treasury.

10 MR TEKOETSILE MOSES MOREMI: I – well I was still in the Municipality.

CHAIRPERSON: Okay, did you change hats?

MR TEKOETSILE MOSES MOREMI: I changed hats, Chair.

CHAIRPERSON: Oh okay.

MR TEKOETSILE MOSES MOREMI: From a Municipal Manager to a CFO.

CHAIRPERSON: Oh okay.

MR TEKOETSILE MOSES MOREMI: I think that was around July 2013.

20 CHAIRPERSON: Is that an upward, sideways, or downwards movement?

MR TEKOETSILE MOSES MOREMI: No I demoted myself, I requested to be demoted Chair.

CHAIRPERSON: Oh okay.

MR TEKOETSILE MOSES MOREMI: Then that letter of the 9th September was then signed by the new Municipal Manager and that was

also a reminder to the Department that, they still have not yet paid. I then left but through my engagements with the now current Municipal Manager, it appears that there was a payment that was done but I don't have records, it may have been done subsequent to me joining Treasury but they indicated that there was a payment that was done by the Department.

CHAIRPERSON: So – but by the time you left the Municipality to your knowledge, no payment had been made?

MR TEKOETSILE MOSES MOREMI: Yes Chair.

10 CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Thank you Chair. Mr Moremi, you left the Municipality in February 2014, is that correct?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

ADV ZINHLE BUTHELEZI: Yes, were you aware of the Province's intention to – I don't want to say expropriate but to transfer this land from Municipality to the Provincial Government?

MR TEKOETSILE MOSES MOREMI: No Chair.

ADV ZINHLE BUTHELEZI: Did you, at any stage learn about this transfer?

20 MR TEKOETSILE MOSES MOREMI: I think, if correct Chair, we'll then have to go to that particular agreement that I signed on the 12th of December 2012.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Thank you yes.

MR TEKOETSILE MOSES MOREMI: I will then give clarity on the

questions that you are asking.

ADV ZINHLE BUTHELEZI: Yes you do make reference to that agreement on your supplementary statement, please take us to how it came about that you signed that agreement.

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: Where is the agreement first?

ADV ZINHLE BUTHELEZI: It is attached as page 66.

CHAIRPERSON: Thank you, yes how did that come about?

MR TEKOETSILE MOSES MOREMI: Ja. Chair I must - I must indicate
10 because this was also covered by Advocate Venter.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: It was around the -
12 December 2013 when I then received the agreement from the - from
the HOD Thabethe. That must then be signed because remember at
that stage I indicated that this agreement is important. The department
had already incurred costs and then we had to at least sign this
agreement to at least protect the interest of the - of the department.

I then read the same agreement and I had specific concerns
on some of the clauses of that particular agreement. Even though it
20 was an agreement between the municipality and the province.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: So I then sent that particular
agreement again to Tata Venter.

ADV ZINHLE BUTHELEZI: Yes but you sent it after you signed it?

MR TEKOETSILE MOSES MOREMI: No before I signed it.

ADV ZINHLE BUTHELEZI: Okay.

MR TEKOETSILE MOSES MOREMI: Before I signed it because you will see his letter. He indicated that I received - he received it on the 12th.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: I only signed on the 14th.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: So he then replied and indicated that this particular contract is in contravention with the one that I had already signed which was the one up until 30 September. I think his
10 opinion is - is attached somewhere else there.

ADV ZINHLE BUTHELEZI: Yes. His opinion is attached and it is also - it was also attached to his affidavit. In brief he said this - this agreement did not comply with what was resolved in the council. Yes. Tell us then what happened to this agreement after you received it.

MR TEKOETSILE MOSES MOREMI: (Intervenues).

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: That particular feedback was also provided to the - to the Government by myself because at that time I had regular telephone engagements with Tata Thabethe ...

20 ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: But then he said this agreement is very much important because remember if you read the clauses of this agreement it is where the municipality is ceding its right and titles to the department of - to the Provincial Government actually through the department.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: So then I had an engagement with him and he said Mr Moremi this contract is so key and you must sign it and I said but I - I cannot sign a contract that did not serve before council and then he indicated that no, no, no we have already spoken to the - to the Mayor.

He does not have a problem and he will then give that particular consent for you to sign it and then ...

CHAIRPERSON: But the Mayor is not council.

10 MR TEKOETSILE MOSES MOREMI: Ja. I - I indicated that Chair that the Mayor is not council ...

CHAIRPERSON: Hm.

MR TEKOETSILE MOSES MOREMI: But they said - in fact I said if that is the case can we then have an undertaking by the Mayor with that particular commitment before I sign the agreement and I must indicate Chair that in page 72 ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: The - the - maybe I must read the last part of that particular ...

20 CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: Consent Chair. It says:

“It is on that background that I, T J Motaung, Mayor of Phumelela do take note and accedes to the contents of the extract above and hereby authorise Mr T M Moremi, Municipal Manager of Phumelela to

sign the Land Use Agreement and its related documents thereto on behalf of council. The granting of permission or authority to the Municipal Manager to sign the Land Use Agreement will be presented by me in the next council meeting for ratification."

Chair I - I - as - as you have alluded the Mayor is not representing council and in fact I had some discussion with him prior to him where I made him aware that there is a consent letter that he must
10 sign. That he must take note that he is not council. Expecting that if - if he then refuses then at least I will be covered but you will see the date there it was signed. It was signed on 13 December ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And it was only then on 14 December that I then signed that agreement with Tata Thabethe who was then representing the - the Department of Agriculture.

ADV ZINHLE BUTHELEZI: Yes. Could ...?

CHAIRPERSON: And again this time were you told what was so urgent about this?

20 MR TEKOETSILE MOSES MOREMI: Chair the only thing that I was told there because we had this agreement and everything. Especially for the mere fact that the State Law Advisors also said this contract must not be signed but it was when Tata Venter said if you do not sign this agreement we are now on the verge where the investors will not be able to - remember there was a commitment that Estina will bring in money.

So if you do not sign this agreement we are now facing a possibility where the investors may not come and invest and that will then have almost fail the whole project and the municipality - the department by that time had incurred costs. So that was the - the motivation or the rationale behind that particular agreement Chair but I - I signed it on that particular basis but I will come to what subsequently happened ...

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: Chair. I - I was not aware of it.

10 CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Yes. So you said it was - Venter who said the investors will withdraw? It is Venter or Thabethe? Just correct that.

MR TEKOETSILE MOSES MOREMI: No, no. It was - it was the HOD, Thabethe.

ADV ZINHLE BUTHELEZI: Thank you.

CHAIRPERSON: Okay.

MR TEKOETSILE MOSES MOREMI: About the urgency of us sending this contract and the consequences of it not being signed by then
20 because then it would have then failed the whole the whole project at all, ja.

CHAIRPERSON: But again you just told about this but you are not given an indication that this was - this was the deadline. We are now closed to a deadline or what the deadline is. You are just told it is urgent. If you do not sign now the investors might pull out but you do

not know where - where was the planning for all of this thing?

Why are these things always brought at a time when you are supposed to have no time to reflect properly and you are supposed to just sign?

MR TEKOETSILE MOSES MOREMI: Yes Chair but as - as an accounting officer I was very much cautious that I do not just sign without - without - even though ...

CHAIRPERSON: Reflect ja.

MR TEKOETSILE MOSES MOREMI: Without the proper processes but
10 yes that was exactly what was communicated to me that this contract is
- is urgent.

ADV ZINHLE BUTHELEZI: Yes. What then have you since learned that followed you signing this contract?

MR TEKOETSILE MOSES MOREMI: Oh yes Chair. As I said I was not aware that subsequent to me signing this agreement at the end the farm will then be transferred to the Provincial Government and as a result the department and Estina entering into a 99 year lease agreement.

It was during that time where the Mail & Guardian were - I
20 was - I was at Treasury between 2014/2015. ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: Where the Mail & Guardian had indicated that the municipality has actually transferred the land free of charge to Estina. So that is exactly how it was reported and I mean by that time I was the accounting officer. There was no way that I could

just allow that particular - it was - it was a - a negative image. So then I took it upon myself even though I was not at the municipal and say no.

Let me rather go to the Deeds Office and go and ascertain the ownership of this particular farm and it was only then Chair page 74 - no from page 73.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: These are the - the documents that I received from the - the Deeds Office but you will note there Chair
10 that in page 74 that document says (indistinct) lease. In page 75 Chair what - what - when I was reading this particular document - in page 75 you will see there Preamble A that the whole farm 44395122 were then subjected to this Notarial Deed.

So it was not 3368 that - that I have spoken about and Chair the reason why I said I only learned that this agreement that I signed may have played a role here. It was in B where it - it says if I read it. It says:

20 "And whereas the Phumelela Local Municipality and the Free State Provincial Government through its Department of Agriculture and Rural Development entered into an agreement of cession and assignment dated 14 September 2012 and signed at Bloemfontein in terms whereof all the Phumelela Local Municipalities rights, title, interest and obligation in the lease premises were ceded and

assigned to the Free State Provincial Government through its Department of Agriculture and Rural Development.”

So that is exactly why I said no but this particular clause is actually in relation to that particular agreement and in - in a nutshell Chair what happened is if - if you read the - the agreement. I think if I may just emphasise important paragraphs is the paragraph 3 page 77.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And Chair - Chair I must just refer
10 you back to - remember that Zayna Investments agreement that I was expected to sign which also had this 99 years. So when I was reading this Notarial Deed that was registered on ...

ADV ZINHLE BUTHELEZI: 18 December.

MR TEKOETSILE MOSES MOREMI: Is it January 2013? Ja, somewhere.

ADV ZINHLE BUTHELEZI: (Indistinct).

MR TEKOETSILE MOSES MOREMI: On the - on 18 January 2013 that is when this Notarial Deed was then registered by whoever lawyers that was acting on behalf of the department then ...

20 ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: And then Clause 3 which is 3.1.

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: It reads as follows:

“This lease is for a period of 99 years commencing on the effective date and terminating 99 years

later.”

3.2:

“The lease shall have the right to renew the lease period or the less ...”

CHAIRPERSON: The lessee.

MR TEKOETSILE MOSES MOREMI: “The lessee shall have the right to renew the lease period for a further term of 99 years to be mutually agreed upon in writing by the lessor and the lessee six months prior to the expiry of the period referred to in Clause 3.1.”

10

The lessee and the lessor Chair is actually the Department of Agriculture and Estina.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Oh the two of them?

MR TEKOETSILE MOSES MOREMI: Ja. If - if you check the page 77 the same page 77 just above. It says 1.7.1. It - it says:

20

“The lessor, the Free State Provincial Government through its Department of Agriculture and Rural Development and the lessee was Estina (Pty) Ltd.”

So in this particular case the less - the lessee and the lessor was between the Department of Agriculture and I must indicate that at that particular time I was absolutely not even aware of this particular agreement. That now the department has now then entered into a 99 year lease agreement with Estina which is the same thing that I was

actually disputing on that agreement of Zayna Investment that I signed.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: So - so but you - you signed an agreement with the Provincial Government as the municipality. Is that right?

MR TEKOETSILE MOSES MOREMI: I signed the agreement with the Department of Agriculture.

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: In my capacity as the Municipal Manager ...

10 CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: And Tata Thabethe as the HOD for the Department of Agriculture.

CHAIRPERSON: Ceding the municipalities rights to the Department of Agriculture?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: And then subsequently the Department of Agriculture leased the - the same - same farm to Estina?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

20 ADV ZINHLE BUTHELEZI: Chair in fact in this - in this document it is not just the farm. It is the entire field.

CHAIRPERSON: It is the entire - entire land.

ADV ZINHLE BUTHELEZI: Including the township and the town of Vrede.

CHAIRPERSON: The entire town.

MR TEKOETSILE MOSES MOREMI: Correct Chair. Correct Chair.

CHAIRPERSON: Okay.

ADV ZINHLE BUTHELEZI: Chair I could see it is now 1 o' clock.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: I just want to check if there is anything that I have left (intervenes).

CHAIRPERSON: I - ja, just check. I would like us to finish with the witness so we can - we do not have to come back after lunch.

ADV ZINHLE BUTHELEZI: Thank you. So Mr Moremi but the - the advice that you have gotten from the State Law Advisors was that you should not sign that agreement. You signed it based on the consent that you received from the Municipal Manager Mr Motaung?

MR TEKOETSILE MOSES MOREMI: From the Mayor, Mr Motaung.

CHAIRPERSON: The Mayor.

ADV ZINHLE BUTHELEZI: Sorry the Mayor, Mr Motaung.

MR TEKOETSILE MOSES MOREMI: Correct Chair. As per the - as per the - the letter that is attached here.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: But also because of what Tata Thabethe said to you. Namely that if you did not sign the investors were about - would pull out.

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: Those were the two things that made you sign?

MR TEKOETSILE MOSES MOREMI: Correct Chair; but Chair ...

CHAIRPERSON: Yes. Huh-uh.

MR TEKOETSILE MOSES MOREMI: Maybe in closing because when -

when ...

CHAIRPERSON: But what - what did you - why did you not say to Tata Thabethe and Mr Motaung but the State Law Advisors say it will be wrong to sign this thing?

MR TEKOETSILE MOSES MOREMI: No, no, no. That was evident because remember Chair when the State Law Advisor gave that particular opinion normally what he does he was sending it to both the department and the municipality. So even the Mayor was - was aware of that and that is why I said when - when I called him and made him
10 aware of these things.

I was just you know - you know cautioning him that be careful when you - when you send that particular thing but yes the department and the - the Mayor were both aware of the - the legal opinion from Tata Venter.

CHAIRPERSON: So all three of you Tata Thabethe, yourself and the Mayor were aware that if you signed this agreement that would be against the advice of the State Law Advisors?

MR TEKOETSILE MOSES MOREMI: I must - I must confirm Chair ...

CHAIRPERSON: Yes.

20 MR TEKOETSILE MOSES MOREMI: And say it is correct, ja.

CHAIRPERSON: Yes, but you all decided it should be done?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: Okay. Huh-uh.

MR TEKOETSILE MOSES MOREMI: Chair perhaps what I can ...

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: What I can indicate in terms of what it is that I have done subsequent to that. I - I brought this particular matter. By that time I was at Provincial Treasury and by that time the - the former Director-General Elzabe was now the - the MEC for Finance in Treasury.

CHAIRPERSON: That is Ms Rockman.

MR TEKOETSILE MOSES MOREMI: Ms Rockman.

CHAIRPERSON: Yes.

10 MR TEKOETSILE MOSES MOREMI: Because I had a copy of this ...

CHAIRPERSON: And - and she had raised some issues with the - with one of the agreements when you were still at the municipality?

MR TEKOETSILE MOSES MOREMI: She raised an issue on that ...

CHAIRPERSON: Ja.

MR TEKOETSILE MOSES MOREMI: Zayna Agreement that spoke ...

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: About a 99 year lease.

CHAIRPERSON: Yes, yes.

MR TEKOETSILE MOSES MOREMI: Yes Chair.

20 CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: So by that time I was in the department. So I actually gave - I cannot recall when but it was during 2012/2013. I then gave her that copy and said let me see. I was not aware but going to the Deeds Office I have now realised that there is a 99 year agreement between the department and - and Estina and then

subsequent to that there were then engagements again with the State Law Advisor and Tata Venter and then that then culminated into the cancellation.

Remember when the - when the department terminated its agreement with Estina around 2014 ...

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: Subsequent to that this 99 year lease agreement was - was cancelled and - and I have attached evidence to that effect. The only thing now that has not yet been done
10 but it is in progress and was confirmed by Tata Venter is that the process where now the - the land is now in a process of being transferred back to the municipality from the Provincial Government.

CHAIRPERSON: Yes, yes.

MR TEKOETSILE MOSES MOREMI: Yes Chair.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: Well it is - it is also important to try and establish - it is important for this Commission to try and establish what it is that would drive people to doing something that maybe they know is contrary to the law but nevertheless they do it. You know. I mean you
20 - you indicated earlier on what the Mayor said to you after you had refused to sign that agreement of the 17th ...

MR TEKOETSILE MOSES MOREMI: Yes.

CHAIRPERSON: Of July. He appreciated that you raise issues and you refuse to sign. That suggest that on the face of it he seems to have appreciated that you were right to refuse.

MR TEKOETSILE MOSES MOREMI: Yes.

CHAIRPERSON: But here is now a situation where the State Law Advisors say you should not sign this agreement. It is - it is contrary. It is unlawful and nevertheless you who had refused to sign the - the agreement of 17 July. The Mayor who had - who expressed support for your stance on that - subsequently on that issue takes the position that okay we must sign.

I do not know if you want to talk about that a little bit or you just want to simply say look it is what Tata Thabethe said about the
10 investors and - and you thought that is - that is enough to justify going against doing something that may have been unlawful.

MR TEKOETSILE MOSES MOREMI: Yes Chair but acknowledging the fact that the agreement was signed against the - the advice by the - by Tata Venter. It did not sit very well with me Chair but as I said you know the urgency and the - the investment that was going to be lost then but Chair remember at that time ...

CHAIRPERSON: He agreed with you?

MR TEKOETSILE MOSES MOREMI: Ja. At that time I was not of the view that the same agreement is now going to be used for the 99 year
20 Notarial Lease but - but what I did Chair it is - it is in one of my correspondences of 15 March which I wrote to Tata Thabethe because if you read the - the opinion of Tata Venter he was actually indicating that but this Land Use Agreement does not have a period of the cession and then it does not have an amount.

So what I did in a letter that I addressed to Tata Venter on

the 5th - Tata Thabethe Chair sorry. I will just raise the last paragraph where I said:

10 “During December 2012 the department entered into a Land Use Agreement with the municipality wherein the rights and obligation of the municipality on the farm were ceded to the department. The Land Use Agreement was very silent on the period of the cession then assignment and does not provide for any future compensation to the municipality in respect of the use of its farm property (indistinct). It is on that basis that the department through the office ...”

That was my request.

“...the department through the office of the State Law Advisor must develop and addendum to the Land Use Agreement wherein the compensation and the period of the cession and assignment is clearly spelt out.”

20 So that is exactly what I did further to (indistinct). This is what I have said but let me also then bring it that we - we need to correct this thing by having addendum but I must indicate that that addendum - addendum was never concluded Chair.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: But I get the impression from what you have said that your - your attitude is yes I know that we went against the advice of the

State Law Advisors. These are the circumstances in which this happened. This is what was said and I did not feel good about it but it did happen and I am not running away from the fact that I - I was party to it. Is that right?

MR TEKOETSILE MOSES MOREMI: Correct Chair.

CHAIRPERSON: Yes. Okay.

ADV ZINHLE BUTHELEZI: Thank you. If I read this cession agreement that you signed with Mr Thabethe it is between - supposed to be between the municipality and the province. Why did you sign it
10 with Mr Thabethe instead of the Premier?

MR TEKOETSILE MOSES MOREMI: Chair remember that in the - the correspondence that I also had which I was privy to because I was interacting more often with the State Law Advisors. There was a time where the State Law Advisor provided a legal advice to the - to the then Premier then in terms of the Land Administration Act of whatever.

CHAIRPERSON: Yes.

ADV ZINHLE BUTHELEZI: Yes.

CHAIRPERSON: About the assignment of (intervenes).

MR TEKOETSILE MOSES MOREMI: Where now then the - the Premier
20 then delegated the signing off agreement to the MEC then Tata Zwane and subsequently then Tata Zwane further delegated it to the- to the HOD. So I was well aware that ...

CHAIRPERSON: Yes.

MR TEKOETSILE MOSES MOREMI: There is an existing delegation. So I did not have any doubt of Mr Thabethe's signing on behalf of ...

ADV ZINHLE BUTHELEZI: Thank you.

MR TEKOETSILE MOSES MOREMI: The Government or the department, ja.

ADV ZINHLE BUTHELEZI: Thank you. So it was based on that delegation of authority?

MR TEKOETSILE MOSES MOREMI: It was based on that delegation of authority Chair.

ADV ZINHLE BUTHELEZI: Thank you.

MR TEKOETSILE MOSES MOREMI: Thanks.

10 ADV ZINHLE BUTHELEZI: And then lastly on the meeting of 12 June did MEC - the then MEC Zwane attend this meeting?

MR TEKOETSILE MOSES MOREMI: Chair I must be honest. When the presentation was done by Mr Thabethe MEC Zwane was not there. You will also note it in the minutes of that particular meeting that ...

ADV ZINHLE BUTHELEZI: Yes.

MR TEKOETSILE MOSES MOREMI: The speaker had indicated that if the MEC arrives in the council meeting then the Mayor will have to then you know acknowledge his presence ...

ADV ZINHLE BUTHELEZI: Yes.

20 MR TEKOETSILE MOSES MOREMI: But he was not part of the - of the presentation. I think he may have joined the council but that particular time but I do not have a good recollection to that one but I must confirm that he was not part of the - of the presentation. It was done by Tata Thabethe ...

CHAIRPERSON: Hm.

MR TEKOETSILE MOSES MOREMI: Who was accompanied by the delegation of the Department of Agriculture and Rural Development.

ADV ZINHLE BUTHELEZI: Thank you. Chair, sorry. The municipality was it involved in the appointment of beneficiaries?

MR TEKOETSILE MOSES MOREMI: Chair I - I must indicate that when that particular process of the identification and what, what of the beneficiaries started I was not part thereof. Remember I had then leased the farm to - to the department. So whatever that the department did subsequent to that particular one.

10 I was not part thereof. So I was not part of the identifications of the beneficiaries and all these things. So I was - I was not party to that particular process.

ADV ZINHLE BUTHELEZI: So you never attended any meetings beneficiaries in ...?

MR TEKOETSILE MOSES MOREMI: I have - I have never attended any meetings with the beneficiaries in Vrede.

ADV ZINHLE BUTHELEZI: Okay. Thank you Chair. That would be all.

CHAIRPERSON: Thank you very much Mr Moremi for having come to give evidence. We appreciate it very much. If we need you again we
20 will ask you to come back but thank you very much. For now you are excused.

MR TEKOETSILE MOSES MOREMI: Thank you Chair and let me also appreciate the opportunity given to me to present my evidence. Thanks Chair.

CHAIRPERSON: Thank you very much.

ADV ZINHLE BUTHELEZI: Chair Ms Gcabashe would like to address you.

CHAIRPERSON: Yes Ms Gcabashe.

ADV LEAH GCABASHE SC: Chairman as I indicated earlier the - this is our only witness today.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I would like to do a rain check on the availability of our witness tomorrow and I am wondering what the best way is to proceed in that regard. If we should simply come back and
10 see you in Chambers later on to confirm that that witness will be proceeding tomorrow.

CHAIRPERSON: As we speak now I suspect you do not know everything that you should know to be able to share with me in chambers about tomorrow?

ADV LEAH GCABASHE SC: At this point in time not yet Chairman.

CHAIRPERSON: Yes. No. It is - it is fine. What we should do is let us be in touch after two but we will not come back here. Let us be in touch so as to talk about tomorrow. Just for the sake of everybody else there is a witness who is supposed to give evidence tomorrow but there
20 are circumstances which may necessitate that her evidence should not be heard tomorrow but we are only going to know later.

So if there will be no hearing tomorrow as a result of decisions that will be taken later the media will be informed through the usual channels but if there is no communication to the media that there will be no hearing tomorrow it will mean that there will be hearing

tomorrow or at least that we will meet at 10 o' clock and whatever decisions might need to be taken would be taken then.

So if you receive communication it will - it will say that there will be no hearing. If you do not receive any communication it will mean we will meet tomorrow and we will meet and then either decide then or we will meet and have a hearing. Is that fine with you?

ADV LEAH GCABASHE SC: That is in order. Thank you very much Chairman.

CHAIRPERSON: That is fine. Okay. We are going to then adjourn on
10 that understanding. If we do not - if there is no hearing tomorrow it is likely that there will be a hearing on Thursday and Friday. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS SINE DIE