

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

15 AUGUST 2019

DAY 145

20

PROCEEDINGS ON 15 AUGUST 2019

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody.

ADV LEAH GCABASHE SC: Good morning – good morning Chairman.

CHAIRPERSON: Yes. Are you ready this morning?

ADV LEAH GCABASHE SC: Yes, yes we are Chairman. Chairman Mr Thabethe has got legal representatives. It might be prudent for them to place themselves on record.

CHAIRPERSON: Yes let us do that.

10 **ADV HERMAN FOURIE:** Good morning Chair.

CHAIRPERSON: Good morning.

ADV HERMAN FOURIE: From my side Herman Fourie from the law firm Jacobs Fourie Attorneys on behalf of Mr Thabethe.

CHAIRPERSON: Thank you very much. Yes.

ADV JACOBS: Good morning Chair. Mr Jacobs from the firm Jacobs Fourie Attorneys in Bloemfontein.

CHAIRPERSON: Thank you. I must clarify is it both attorneys for him – for him or?

20 **ADV LEAH GCABASHE SC:** Correct Chairman both of them are from – for Mr Thabethe.

CHAIRPERSON: Both – okay, no that is fine. Okay no thank you. Okay. You are ready?

ADV LEAH GCABASHE SC: Yes I am Chairman.

CHAIRPERSON: Let us administer the oath or affirmation unless you have got something to say before we do that?

ADV LEAH GCABASHE SC: I always do Chairman.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: If I might just?

CHAIRPERSON: Yes okay.

ADV LEAH GCABASHE SC: There is just one or two things.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: The first is that it is Mr Peter Mbana Thabethe who will be giving evidence today. He is an implicated party Chairman but he has all along indicated his willingness to assist the
10 commission. That is really what I wanted to place on record. And – which brings him here today.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: The second point Chairman is simple again his evidence falls within the ambit of terms of reference 1.4 and 1.9. The third point Chairman is that the exhibit that contains his affidavits is Exhibit HH10. If you may kindly admit that to the record?

CHAIRPERSON: Let us do that once – after she – he has been sworn in.

ADV LEAH GCABASHE SC: Thank you Chairman.

20 **CHAIRPERSON:** Well just – just before you start with his evidence.

ADV LEAH GCABASHE SC: And then the last point Chairman is that we will making reference over the next two days to various documents that you have before you but in due course we will then make reference to them.

CHAIRPERSON: Yes. Okay.

ADV LEAH GCABASHE SC: We have added some documents to the reference file for instance but it keeps growing as we – as we continue with this.

CHAIRPERSON: Okay no that is fine.

ADV LEAH GCABASHE SC: Thank you Chairman. The witness is ready to be sworn in.

CHAIRPERSON: Ja just administer the oath or affirmation please.

REGISTRAR: Please state your full names for the record?

MR MBANA PETER THABETHE: Mbana Peter Thabethe.

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

MR MBANA PETER THABETHE: No.

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

MR MBANA PETER THABETHE: 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 right hand and say, so help me God.

MR MBANA PETER THABETHE: So help me God.

CHAIRPERSON: Thank you.

20 **ADV LEAH GCABASHE SC:** Thank you Chairman.

CHAIRPERSON: Ja you may proceed.

ADV LEAH GCABASHE SC: Maybe at this point.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: Maybe at this point you will then ...

CHAIRPERSON: Admit the...

ADV LEAH GCABASHE SC: Admit Exhibit HH10 to the record.

CHAIRPERSON: The lever arch file containing the affidavit of Mr Mbana Peter Thabethe will be marked Exhibit HH10.

ADV LEAH GCABASHE SC: Chairman the second set of documents are what we have labelled the court record. It is a record of other court proceedings that we thought would be relevant at some point even if it is when we are making submissions – submissions Chairman. We ask that those too be entered into the record as the court record bundles A and B?

10 **CHAIRPERSON:** Do they relate to different court proceedings?

ADV LEAH GCABASHE SC: They relate to different court proceedings Chairman but you will find that a number of the FA's served in different – same FA served in different court proceedings. So by way of example there is one that has got – that serves here in these papers that Mr Thabethe has submitted that we have put into that file Chairman because it has a few more annexures or it has the complete set of annexures. Mr Thabethe has indicated that he has not had access to all the papers he would have liked to have access to and for that reason he is relying on other sources of the same information even
20 other affidavits. It is really a reference bundle Chairman that we believe will come in handy.

CHAIRPERSON: I wanted to find a way of identifying it you see the one has got an index on top which also has got a case number so it is easy to identify it with a case number but the other one does not seem to have any court process immediately at the top with a case number.

ADV LEAH GCABASHE SC: Chairman if – it is Volume 1 and 2 it is all one case if my recollection serves me well. It is the same case Chairman.

CHAIRPERSON: Hm it is just that you said it is different court proceedings.

ADV LEAH GCABASHE SC: I beg – Chairman.

CHAIRPERSON: I asked whether they relate to different court proceedings you said yes.

ADV LEAH GCABASHE SC: Okay I misunderstood the question
10 Chairman. Those particular papers.

CHAIRPERSON: One matter?

ADV LEAH GCABASHE SC: Relate to one matter.

CHAIRPERSON: Oh okay. The B is it a continuation of Annexures to certain affidavits?

ADV LEAH GCABASHE SC: That is correct Chairman.

CHAIRPERSON: Yes. Okay.

ADV LEAH GCABASHE SC: The microphone Chairman.

CHAIRPERSON: The lever arch file that contains documents relating to case number 168/2 – is that 2016?

20 **ADV LEAH GCABASHE SC:** 2018 if I am not wrong Chairman. It is...

CHAIRPERSON: 2018.

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: In the Free State High Court Bloemfontein in the matter between the National Director of Public Prosecutions is to be marked Exhibit HH Court Records A and the other lever arch file which

has got some of the annexures belonging to the same matter will be marked Exhibit HH Court Records B. Okay.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Thabethe you have the witness bundle in front of you. You have to switch on your microphone please Sir. So you press – that is it and you may want to pull it a little closer just so that you are very audible. Thank you very much. And then the nod is not recorded on the microphone.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Thank you.

10 **MR MBANA PETER THABETHE:** Thank you.

ADV LEAH GCABASHE SC: Mr Thabethe if we look at the very first document in the witness bundle that is in your possession – if you look at page 1 – paginated page 1, the numbers are on the right hand side of the page and then if you go to...

CHAIRPERSON: That is Exhibit HH10?

ADV LEAH GCABASHE SC: That is Exhibit HH10 Chairman.

CHAIRPERSON: That you are asking him to look at ja.

ADV LEAH GCABASHE SC: That is correct. And if you keep your finger on page 1 and turn to page 26.

20 **MR MBANA PETER THABETHE:** Yes.

ADV LEAH GCABASHE SC: I would like to ask you to kindly identify

1. Whose document this is?
2. Whose signature is on page 26?
3. Where the document was deposited to and when?

MR MBANA PETER THABETHE: Thank you Chair. The names on the

affidavit are mine and the signature is mine. It was – the oath was taken in Bloemfontein on the 5 August 2019.

ADV LEAH GCABASHE SC: Thank you. Can you then look at the next document that you have submitted? If you turn to page 100 paginated page 100.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: And while you have your finger there if you can then turn to page 145 – 145.

MR MBANA PETER THABETHE: Yes.

10 **ADV LEAH GCABASHE SC:** Again could you identify the name on page 100 whose document this is. Then at 145 who the de – whose signature appears thereon and the date and place at which this document was deposited to?

MR MBANA PETER THABETHE: Chair it is my name and my signature. It was a sworn affidavit that was done in Bloemfontein on the 18 May 2018.

ADV LEAH GCABASHE SC: Thank you. The last document you will find on page 236 and if again you put your finger there and go to page 243. Once again can you identify this document, date and place of
20 deposition for the Chairman?

MR MBANA PETER THABETHE: Thank you Chair. It is my name and ...

ADV LEAH GCABASHE SC: Page 243 has the signature.

MR MBANA PETER THABETHE: It is my signature.

ADV LEAH GCABASHE SC: And when did you depose to this

document?

MR MBANA PETER THABETHE: It was done on the 10 August 2017.

ADV LEAH GCABASHE SC: Thank you. So today you will be relying on these three affidavits 2017, 2018 and 2019? Is that correct?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: Now that we have these formalities on the record could you please tell the Chairman what your occupation...

CHAIRPERSON: Maybe before you do that.

ADV LEAH GCABASHE SC: Yes Chairman.

10 **CHAIRPERSON:** I do not know whether you did get a chance to get somebody to work towards getting clearer copies of these affidavits and whether that is likely to produce any positive results?

ADV LEAH GCABASHE SC: Chairman can I...

CHAIRPERSON: I just could not read any of these pages – these pages – this affidavit which is shaded.

ADV LEAH GCABASHE SC: In particular the one – the 2018 affidavit Chairman.

CHAIRPERSON: Starting from page 99.

ADV LEAH GCABASHE SC: Yes.

20 **CHAIRPERSON:** Up to the end of – up to just before divider number 5.

ADV LEAH GCABASHE SC: Yes Chairman we have asked our investigators to see if they can get a better copy. We have been trying to do so Chairman.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: We have not had very much luck.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: But I think we have had a new opportunity to find.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Better copies of affidavits that have been filed.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Mr Thabethe explained this morning when we had our short consultation as did his attorneys that they actually
10 checked the court file.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: And that file's copies were ...

CHAIRPERSON: Is worse than these?

ADV LEAH GCABASHE SC: Worse than these particular ones.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: They too have made a great effort.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: To try and get clearer copies.

CHAIRPERSON: Maybe they might indicate whether that is his
20 attorneys whether they were in touch with the attorneys for the NPA in that matter whether they also have a similar problem. Because I thought maybe the attorneys on the other side might have a clearer copy because otherwise if possible maybe one of the lawyers rather than the investigators could just phone the firm of attorneys who acted for the NPA and say, do you have a clearer copy of this document can

we be assisted? And then they might just be able to assist. I do not know. Is that something that has been done?

MR HERMAN FOURIE: Chair thank you we have tried in the past to obtain a clearer copy. We have personally like my learned colleague stated tried to obtain the court file to see if for some reason a clearer copy would be in the court file and there has been no success. If it can be we can try and obtain certain unsigned documents if that might be able to clarify and then we can place that on record that the content of same would be similar that might assist.

10 **CHAIRPERSON**: Oh that would assist. If it is basically the same documents just that it is unsigned that would assist then that part can placed on record and I am sure Mr Thabethe can confirm that it is unsigned but it is exactly the same or something like that. It is something that would be most welcome.

MR HERMAN FOURIE: Chair we then undertake if it is suitable for yourself and for my learned colleagues to try and obtain throughout such a copy we obviously cannot make any promises to same but if we can as soon as same becomes available then we can provide yourself and everyone concerned with such a copy and then at a relevant time
20 we can just confirm accordingly.

CHAIRPERSON: Yes. But you do not – you do not recall whether your attempts included talking to the attorneys who represented the NPA in those proceedings?

MR HERMAN FOURIE: Chair at this stage for today not when we drafted the affidavit

CHAIRPERSON: Yes.

MR HERMAN FOURIE: We tried to obtain.

CHAIRPERSON: Ja.

MR HERMAN FOURIE: We did not make a renewed effort.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: For today.

CHAIRPERSON: Yes okay.

MR HERMAN FOURIE: You will note in the affidavit for Mr Thabethe there is mention made that if certain documents are requested
10 beforehand.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: That it be requested in order for us to try and eliminate what the situation that we have now.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: But we will endeavour to do so.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: From now on again.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: And as soon as same becomes available we will
20 inform everyone accordingly.

CHAIRPERSON: Yes that would be helpful because when I tried to read those affidavits last night I just could not really read anything and obviously that is not good for us when we deal with it – when the witness deals with it if I have not had a chance to look at it. So of course you not being in your office does cause some challenges in

terms of getting certain things maybe done but maybe not. So if it is possible that one could get a clearer copy even if it is an unsigned copy as long as the understanding is that it is exactly the same document and if we – I could have it by end of today then be able to look at it this evening before tomorrow that would be helpful.

MR HERMAN FOURIE: We will endeavour for same Chair.

CHAIRPERSON: Yes thank you.

MR HERMAN FOURIE: Thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Thabethe could
10 you please tell the Chairman what your current occupation is?

MR MBANA PETER THABETHE: I am a pensioner Chair.

CHAIRPERSON: You seem to say that with – with some pleasure. Maybe you are enjoying your retirement.

MR MBANA PETER THABETHE: Thank you Chair no I – since having relinquished my position of Head of Department I opted to go on pension.

CHAIRPERSON: Okay, okay, okay, thank you.

ADV LEAH GCABASHE SC: You – you speak of relinquishing your position at the Department when I read paragraph 17 on page 7 of your
20 affidavit the 2019 affidavit you speak here of a contract you had. You speak of being suspended but you also go on to say at paragraph 17 that the contract has not yet been terminated by the Department. Maybe you could just explain that to the Chairman?

MR MBANA PETER THABETHE: Thank you very much Chair. I was suspended pending the report that was tabled by the Public Protector

that required that the Province should do an investigation on the – on the recommendations that were raised by the Public Protector. And then during my suspension my contract also came to an end. During the time when that contract came to an end I never received any indication from Government whether this contract has been terminated or whether the contract has been extended. So it was quiet. But the – the salary was terminated. I since then applied for my pension benefits thinking that I am no longer an employee hence – because the contract did come to an end but I was not given any notice in that effect if
10 indeed it had – the contract was terminated.

ADV LEAH GCABASHE SC: Thank you. It just was not clear from paragraph 17 whether you were still drawing a salary or not but you have now clarified that point.

MR MBANA PETER THABETHE: Yes, yes.

ADV LEAH GCABASHE SC: I take it that you did not get a severance package or any kind of package either from the Department you last served in?

MR MBANA PETER THABETHE: It was not a severance package it was a pension.

20 **ADV LEAH GCABASHE SC:** Yes. The investigation you referred to – you were suspended because they were going to investigate some matters. If you look at page 148 unfortunately Chairman it is the same file Chairman.

CHAIRPERSON: No, no that is fine.

ADV LEAH GCABASHE SC: It is one of those slightly opaque.

CHAIRPERSON: Yes I am looking for another file for another reason.

Yes okay. What page?

ADV LEAH GCABASHE SC: It is page 148 Chairman and it is Annexure FR2. It is one of the rather poor copies but I really am simply making reference to this. This is the letter of suspension.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Mr Thabethe what has come of any investigation that you may be aware of that followed on the recommendations of the Public Protector? If you are not aware of an
10 investigation you will simply say that.

MR MBANA PETER THABETHE: I am now aware Chair.

ADV LEAH GCABASHE SC: You have never been called back to the Department to deal with any matters arising from the Public Protector's Report?

MR MBANA PETER THABETHE: The only time I have been called was last week where I have been called by the Public Protector to come and give witness. But it related to a separate investigation on the same matter.

ADV LEAH GCABASHE SC: Can I then – I will not take that matter any
20 further because it is not one that we are dealing with directly but can I ask you this question? There was a report ...

CHAIRPERSON: Well maybe Ms Gcabashe I do not think he answered your question. He may have misunderstood the question. I think the question Mr Thabethe was whether you have since your suspension the Department has ever called back to the Department to ask you about

anything connected with that investigation or your suspension.

MR MBANA PETER THABETHE: No I have not been called Chair.

CHAIRPERSON: Okay. Thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. Thank you Mr Thabethe. There was of course also a report that had been commissioned by National Treasury in or around 2012, 2013 and a final report on the aspects investigated was issued in February of 2014. That report also recommended that steps be taken against you in particular – do you know of any investigation against your conduct or
10 aimed at interrogating your conduct that might have been initiated as a result of the National Treasury Report?

MR MBANA PETER THABETHE: Yes Chair I am aware of an investigation that was done by the National Treasury with regard to the Vrede Dairy.

ADV LEAH GCABASHE SC: The question though is are you aware of any investigation that interrogated your conduct which investigation would have been prompted by the National Treasury findings in 2014?

MR MBANA PETER THABETHE: No I am not aware Chair.

ADV LEAH GCABASHE SC: Let us talk a little bit about your
20 qualifications Mr Thabethe. Would it be correct to say that you are an agriculturalist?

MR MBANA PETER THABETHE: That will be correct Chair.

ADV LEAH GCABASHE SC: I think of pertinent relevance to these proceedings would be for the Chairman to understand just a – give him a brief summary of those qualifications that you have in the agricultural

field?

MR MBANA PETER THABETHE: Thank you very much Chair. I have since the 1 February 1989 employed and involved in the agricultural sector in different areas in South Africa. I obtained by Bachelor of Agriculture Degree in 1988 from the University of Fort Hare and during 1991 I obtained my Bachelor of Agriculture Honours Degree also from the University of Fort Hare. And then I obtained my Master's Degree in Development Communication from the University of Pretoria in 2002. After I obtained my first Bachelor of Agriculture Degree I was employed
10 as an agricultural advisor at the Mpumalanga Agricultural Development Corporation during the period of 1 February 1989 until the 30 August 1992. On 1 September 1996 after having moved from the Development Corporation into the then KaNgwane Department of Agriculture which later was then amalgamated and I was appointed as Assistant Director Non Formal Training. I remained in the employment of the Department of Agriculture for the Mpumalanga Province up until 3 July 2009 although in a different position and in different areas of the province.

On 3 August 2009 I was appointed as a special advisor to the Minister for the National Department of Agriculture Forestry and
20 Fisheries of which after I was appointed as an Acting Deputy Director-General Operational Management for the Department of Agriculture Forestry and Fisheries until 30 July 2011. I relocated to Bloemfontein during 2011 after having been appointed on 1 August 2011 as the Head of Department for Rural Development for the Free State Provincial Government.

During 2013 the Department of Rural Development was amalgamated with the Department of Agriculture. Whereas I was then appointed as Head of the Department from 1 May 2013. Chair since I - I have commenced my employment in the Agricultural Sector I have gained extensive knowledge and experience in the sector in agriculture in general and I have been actively involved in a number of activities.

Inclusive was strategic planning for the South African Agriculture and Agricultural Development and I have also attended various international causes and references on behalf and - and
10 conferences on behalf of the National and Provincial Departments of Agriculture. Chair we have attached in this affidavit a copy of my curriculum vitae which contains a summary of my employment history.

The specialist knowledge I have acquired. My in service training. My international experience and my academic qualification which has been attached. I can conclude Chair by saying I was therefore appointed as Head of the Department of Agriculture and Rural Development based on my knowledge and experience of agriculture in South Africa. I thank you Chair.

ADV LEAH GCABASHE SC: Mr Thabethe you refer to your CV. You
20 also have told the Chairman that you were the Head of Department for the - for - in the Free State for the Department of Agriculture and Rural Development. Your CV also indicates that at some point - point you were an Acting DG in the National Department.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: So you have held senior positions in your

term of employment?

MR MBANA PETER THABETHE: Yes. I have - I have done so Chair.

ADV LEAH GCABASHE SC: I - I have an interest in what you call specialist knowledge acquired which you have put into your CV. It is on page 1-5-7. That you have that particular column.

CHAIRPERSON: Maybe Ms Gcabashe I just want him to fill a gap that I picked up on his employment history. A period of four years between 1992 to 1996 it looks like you were not working. Is that correct? When you were telling us what - what you were doing when and where. There
10 was a gap there.

MR MBANA PETER THABETHE: Thank - thank you Chair. When - when I moved from the Mpumalanga Development Corporation I joined the KaNgwane Government in which I worked until it - there was an amalgamation of the regions which was former South Africa and - and the homeland systems. It was then that I - after that amalgamation I was appointed Assistant Director.

CHAIRPERSON: So during that four - four year period in part you were - before 1994 and what was called KaNgwane ...

MR MBANA PETER THABETHE: KaNgwane.

20 **CHAIRPERSON:** Homeland or Government and then after 1994 then it became Mpumalanga Province.

MR MBANA PETER THABETHE: Mpumalanga.

CHAIRPERSON: Is that correct?

MR MBANA PETER THABETHE: That is correct.

CHAIRPERSON: Okay. That is where - that is where you were.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: It was just that something that I think in your - in your statement there was also that gap but I - I also thought when you were speaking there was a gap but maybe I did not understand correctly. So you were in partly KaNgwane then partly in Mpumalanga Administration?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay. Thank you.

ADV LEAH GCABASHE SC: So I am at page 157 of the paginated
10 papers Mr Thabethe and I would like you to interpret for the Chairman the specialist knowledge acquired table. I - I have a particular interest in what would be an intermediate level of knowledge as opposed to an advanced level of knowledge and the reason for my interest is because the very last entry speaks to the Constitution of the Republic of South Africa, Section 25 and Schedule 4 of the Constitution.

Now for those competencies you say you have or had an intermediate level of knowledge. Please explain that to the Chairman.

MR MBANA PETER THABETHE: Ja. The - the - thank you Chair. My - my indication there - the - the first column there was basic. It means it
20 is - it is elementary. You have not dealt with that particular act or whether it is policies that you have dealt with. You - you do not have thorough knowledge in that regard.

ADV LEAH GCABASHE SC: (Intervenes).

MR MBANA PETER THABETHE: When you ...

ADV LEAH GCABASHE SC: Sorry. Can you repeat that? If it is basic

you do not have thorough knowledge in that regard?

MR MBANA PETER THABETHE: Yes. You - you have just exposed to them but you have not interacted in terms of the implementation.

ADV LEAH GCABASHE SC: Yes.

MR MBANA PETER THABETHE: If you have - you - you are intermediate my interpretation was that you have dealt with it but still at a lower level. When you are advanced it - it means you have also dealt with it at senior level.

ADV LEAH GCABASHE SC: You see my - my interest in just probing
10 this a little further is because of the very senior positions you have occupied and the centrality of the Constitution to the manner in which a senior member of the Public Service would conduct him or herself. Are you with?

MR MBANA PETER THABETHE: I am with you Chair.

ADV LEAH GCABASHE SC: Now for the Constitution of the Republic of South Africa one of the focal areas we will be dealing with today and tomorrow is Sections 2-1-5, 2-1-6 and 2-1-7 of the Constitution. You have understood that proposition?

MR MBANA PETER THABETHE: Yes.

20 **ADV LEAH GCABASHE SC:** I note however that you also referred to Section 25 of the Constitution which is the provision that deals with property. Also a rather important element in agriculture.

MR MBANA PETER THABETHE: Yes ma'am.

ADV LEAH GCABASHE SC: So my question is if you were not as familiar with the Constitution and with - in particular the sections I have

just read out to you would that be something that you would disclose to an - a perspective employer or what would the position be?

MR MBANA PETER THABETHE: The - the reason Chair why I have marked myself down in that regard as intermediate is because it requires a thorough legal knowledge for you to be able to do that interpretation. Now I did not have that level of knowledge for me to be able to do interpretation. Hence I have placed myself as intermediate.

CHAIRPERSON: Was the knowledge that you are referring to there that you had knowledge of the Constitution in general or was it
10 knowledge of Section 25 of the Constitution?

MR MBANA PETER THABETHE: It - it was mostly the knowledge of Section 25 and Schedule 4.

CHAIRPERSON: So what you were saying you had what you regarded as - as intermediate knowledge of was Section 25 of the Constitution and Schedule 4?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Can I however point out to you
20 Mr Thabethe that when one looks - I know it is a poor copy - but when one looks at the punctuation here you have written Constitution of the Republic of South Africa, - that is the punctuation that matters. Then you write Section 25 and Schedule 4. I simply explain to you why I read it differently.

That because of the punctuation you have put in here you are talking - and also because of the positions that you occupied as a

senior manager in the Public Service that you would have to be familiar really with the broad provisions of the Constitution you must as a senior manager. You cannot become a Head of Department and not know whether by way of example a Premier or a Member of the Executive Council should be signing off on a particular resolution or proposal because it will have a legal implications.

You know there is a lot that you actually need to be able to - to discuss with the people you work with when you are in a senior position and those provisions that you are discussing with them - I just
10 took an easy one. That one is Section 100 of the Constitution. Those provisions actually inform you and inform your principals of the powers you have and the powers they have. So the Constitution is really central to everything we do.

CHAIRPERSON: Maybe you might wish to - to check whether in the light of the comma to which you have made reference which - which I could not see because this copy is so poor. You might wish to check what he has to say to your understanding of that. Namely that it seems to be saying that he has intermediate knowledge not just of Section 25 and Schedule 4 but of the Constitution, Section 25 and Schedule 4.

20 What - what do you say to that question - to - to that understanding of what is written there? Do you agree with it? Do you not agree with it?

MR MBANA PETER THABETHE: Chair I - I agree with - with the interpretation. It includes the Constitution ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Section 25 and Schedule 4.

CHAIRPERSON: Okay. Thank you. So that part is clarified.

ADV LEAH GCABASHE SC: Thank you Chairman and - and it is a well-made concession because of your seniority within the service and the responsibility that comes with the level at which you operated both at National Government and at Provincial Government because by way of example you are advisor to Minister Joemat-Pieterse at some point.

Again as an advisor you have to be familiar with the powers that the Minister may or may not exercise. You would agree?

10 **MR MBANA PETER THABETHE:** That - that is correct Chair. The - the reason why I indicated it in my CV so that whoever gets exposed to my CV to take a decision either of employment or for any other purpose will have an understanding of my knowledge and understanding of the Constitution, Section 25 and Schedule 4 because those which I thought will be more relevant to - to my job.

CHAIRPERSON: Would it be fair to say what you refer to as intermediate knowledge of the Constitution, Section 25 and Schedule 4 - would it be fair to say that that means reasonable knowledge knowing that you are not necessarily a lawyer but you - it is a reasonable
20 knowledge of the Constitution at least insofar as it may relate to matters that fall within your job. Would it be fair to say that is what it means?

MR MBANA PETER THABETHE: That - that is correct. That is correct Chair because my interpretation of advanced it means you are an expert.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: I - I will - to give you an indication now I will be exploring this matter a little further when we look at the senior - I beg your pardon. The Supply Chain Management Policy of the Department of Agriculture that you signed off on because that document gives effect at the end of the day to Section 2-1-7 of the Constitution but I do not want to explore it now.

I will probably explore it after tea. I just want to indicate to you now that this is going to be an important aspect of what I will be exploring really having a discussion about as we proceed. More pertinently for current purposes could you please enlighten the Chairman on whether you were headhunted for the position of Head of Department Rural Development in the Free State or whether you applied for that job voluntarily?

MR MBANA PETER THABETHE: Chair I applied for the job which was advertised. In - in fact Chair I - I had to choose. The National Department of Agriculture Forestry and Fisheries had actually placed me to become an Agricultural attaché in Brazil and I at that same time I had applied for the position in the Free State. I had to choose which one because my kids were still at school I opted to stay in the country. I opted to go to the Free State.

ADV LEAH GCABASHE SC: Having opted to go to the Free State can I ask you this question prior to your appointment as Head of Department Rural Development had you met the then Premier Mr Magashule? So prior to your appointment had you met the then Premier Mr Magashule?

MR MBANA PETER THABETHE: Yes Chair. I have met at different gatherings and also in the ANC meetings.

ADV LEAH GCABASHE SC: Because as I understand it, it is the Premier who appoints Heads of Department. Please correct me if something different happened in your case.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: You were appointed by - and that is the norm - by the Premier?

MR MBANA PETER THABETHE: By the Premier. That is correct Chair.

10 **ADV LEAH GCABASHE SC:** The Premier however did not encourage you in any way manner or form to apply for this job?

MR MBANA PETER THABETHE: No. Not - not so.

ADV LEAH GCABASHE SC: Had you met the MEC who you ended up reporting to Mr Mosebenzi Zwane prior to your appointment as Head of Department Rural Development?

MR MBANA PETER THABETHE: No Chair. I only saw him the first time during the interview.

ADV LEAH GCABASHE SC: Who else sat on that panel that interviewed you?

20 **MR MBANA PETER THABETHE:** I do not remember very well. I do not want to speculate in case I - I give wrong names but what I can say it was a team of MECs that interviewed me.

CHAIRPERSON: The Premier was not part of the panel?

MR MBANA PETER THABETHE: No. The Premier was not part of the panel.

ADV LEAH GCABASHE SC: Is it correct that on your appointment in 2011 the Department of Rural Development and the Department of Agriculture were two separate departments?

MR MBANA PETER THABETHE: That is correct Chair. They were two separate departments under one Member of the Executive Council.

ADV LEAH GCABASHE SC: Could you then please explain to the Chairman the distinct competencies and responsibilities of the Department of Rural Development as opposed to those of the Department of - of Agriculture?

- 10 **MR MBANA PETER THABETHE:** The - the Department of Agriculture derives its mandate from the National Department of Agriculture Forestry and Fisheries which were in the past as one department which were then split from National. After that split we had a National Department of Agriculture which they added two functions which was Forestry and Fisheries and the new department that was created was the Department of Rural Development and Land Reform.

- 20 The Department of Agriculture had a concurrent function with the Provincial Department of Agriculture but not in all aspects like Fisheries. Fisheries was only a national competency. It is not a competency of the province. The same with the Department of Rural Development and Land Reform. The Land Reform part it is a national competency but the Rural Development it is a concurrent function.

So when - when the Department of Rural Development was formed in the provinces after national had decided on a Department of Rural Development and Land Reform the province had only the mandate

for Rural Development. When it was initiated in the Free State that responsibility was given initially to the Department of Public Works but on operations it became very difficult for the Department of Public Works to work with the Department of Rural Development because they had to mostly deal with agricultural development and farmers because those were the Rural Development issues that were to be dealt with.

They then transferred the function to the Department of Agriculture in the province of which then they advertised the post for the Head of Department for Rural Development and that is the position
10 that I applied for. Then the two were easy to work together but there were still challenges because there were two separate departments. Each one with a Head of Department reporting to the same MEC.

A recommendation was then made that the two must be amalgamated into one department with one Head of Department.

ADV LEAH GCABASHE SC: Who made that recommendation?

MR MBANA PETER THABETHE: The recommendation was raised by the two of us who were HODs for Agriculture and Rural Development. We made a recommendation because we - we saw it very difficult to work and operate because in fact it was supposed to be one person
20 attending the other meeting. The other person attending the other meeting of the other department but we were supposed to come together and consolidate that information so that we are able to plan and work together. So it - it was not easy.

ADV LEAH GCABASHE SC: But that planning and working together was for reporting purposes reporting to the MEC. I - I would have

assumed that their distinct functions that Rural Development would require of an officer and that Agriculture would require of an officer or an HOD.

MR MBANA PETER THABETHE: It - it was not only reporting but also the budget part. You - you cannot have one vote reported by two accounting officers because the vote was one because the MEC will present one budget vote and then you will then have one accounting officer because you cannot have two. It means the other HOD will not be an accounting officer.

10 **CHAIRPERSON:** So I guess there was difficulty in establishing who - between the two of you - who would be the accounting officer as long as there were two Heads of Department.

MR MBANA PETER THABETHE: Yes. It - it - fortunately I was new. I then allowed the older HOD to become the accounting officer.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: But please explain that. What is - what is your understanding of an accounting officer?

MR MBANA PETER THABETHE: An accounting officer becomes an accounting officer in terms of the PFMA.

20 **ADV LEAH GCABASHE SC:** What responsibilities come with being an accounting officer?

MR MBANA PETER THABETHE: As - as highlighted in the PFMA there are responsibilities given to the PFMA so that the accounting officer becomes accountable of all activities including the budget that happens in that department. Reporting responsibilities and - and also

operational activities, capacity building. So across those responsibilities must be - must be accounted for.

Responsibilities can be delegated but it - their accountability remains the responsibility of the accounting officer.

ADV LEAH GCABASHE SC: So just to take an easy scenario. When you then became HOD in 2013 when you became HOD of the Department of Agriculture and Rural Development you were the sole accounting officer. You were the Head of Department. You took responsibility for all matters relating to the operations of the
10 department?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: I am not sure that your answer contained exactly what Ms Gcabashe was looking for in her question that preceded this last one. My understanding of her question is that she wanted you to tell me, at least the important responsibilities of an Accounting Officer in a Government Department, do you want to do that, some of the important responsibilities or functions of an Accounting Officer.

MR MBANA PETER THABETHE: I can mention a few Chair, the budgeting responsibility, the expenditure of the budget, the reporting
20 responsibility in terms of those budgets and expenditures that you have, it becomes the responsibility of the Accounting Officer. Accounting to the legislature, accounting to Treasury and also accounting to the National Department of Agriculture and the Department of Rural Development.

CHAIRPERSON: But isn't the position that, apart from accounting to

somebody as an Accounting Officer, a very important responsibility that an Accounting Officer has in a Government Department whether it's Provincial or National Department, is to make sure that funds allocated to the Government are used properly for the purposes for which they are set aside and to make sure that funds for the Department, only used in accordance with proper procedures, certain processes are followed and there is no wastage of funds and so on, isn't that – aren't those some of the important responsibilities. I may not be tabulated in the way they are formulated in certain legislation?

- 10 **MR MBANA PETER THABETHE:** That's correct Chair, it's part of expenditure so they get covered, how do you spend the budget correctly and so on so as you deal with your expenditure part of the budget then it has got a range of activities that are covered under expenditure.

CHAIRPERSON: Yes thank you.

ADV LEAH GCABASHE SC: In fact the way you put it Mr Thabethe paragraph 18 page 7 – paragraph 18 of your affidavit is that you had responsibilities – I'll wait for you to get to that page.

MR MBANA PETER THABETHE: Yes I'm there Chair.

- 20 **CHAIRPERSON:** Do you say paragraph...[intervention].

ADV LEAH GCABASHE SC: Page 7 paragraph 18 Chairman.

CHAIRPERSON: Yes you may proceed.

ADV LEAH GCABASHE SC: You outline your responsibilities as Head of Department as including – and I'm just jumping a couple of lines to the fourth line,

“Ensuring effective service delivery within the legal mandates of the Department and the Free State Provincial Government”.

MR MBANA PETER THABETHE: That’s correct Chair.

ADV LEAH GCABASHE SC: Those are your words, so your understanding is, the manner in which you discharged your duties had to be within the legal mandates of the Department and the Free State Provincial Government?

MR MBANA PETER THABETHE: That’s correct Chair.

ADV LEAH GCABASHE SC: Of course one knows that the umbrella
10 framework that informs those legal mandates – I go back to, it would be the Constitution, the PFMA, Treasury Regulations, Instruction Notes, Practice Notes etcetera, etcetera.

MR MBANA PETER THABETHE: That’s correct Chair.

ADV LEAH GCABASHE SC: You’re reporting – when you reported did you report to the MEC, one, did you report to the Premier, two or did you report to Exco, that’s the Executive council?

CHAIRPERSON: Or all of the above?

ADV LEAH GCABASHE SC: Or all of the above, and if you could just elaborate on how this worked when you were Head of Department?

20 **MR MBANA PETER THABETHE:** As Head of Department you report to the MEC, the MEC is the member of the Executive Council. Heads of Department attend the Executive Council on invitation, so we do not directly report to the Executive Council but we go there on invitation to make – to attend a meeting or to make a presentation but the reporting line is the Head of Department report to the MEC.

ADV LEAH GCABASHE SC: I have also understood, and please correct me if I'm wrong, that Heads of Department would also attend Legotlas which really are political forums but it's an interface between what the Politicians would like to do in discharging their mandate because they are the majority party and what the administrators, people like you, have to do to implement that mandate, have I got it right?

MR MBANA PETER THABETHE: That's correct Chair we – Heads of Department do attend Legotla to understand the mandate and also to advise on technical issues.

10 **ADV LEAH GCABASHE SC:** How many of those would you attend in a year?

MR MBANA PETER THABETHE: It's – I'm trying to recollect.

ADV LEAH GCABASHE SC: And estimate – I think the Chairman would be happy, just to get a sense of that interface, that really is all we're trying to explore?

CHAIRPERSON: Like two or three Legotlas a year or only one more or less?

MR MBANA PETER THABETHE: We would actually attend more than one, you'd have a Government Legotla, you'll have a local Government
20 Legotla because as a Provincial Department, working with Municipalities you'd want to know what are the issues. Sometimes, you may – in the Province you may have more than one maybe two in another year – it depends on the issues on the table that they may deal with issues, if that agenda might not have been finished, then another Legotla could be called. It depends on the specifics, that what could

be required to be dealt with.

ADV LEAH GCABASHE SC: Can you explain where at those forums you would then be given instructions in a particular way or whether you simply would be exchanging ideas with your political principals who also happen to be the principals in your department?

MR MBANA PETER THABETHE: In the Legotla it's mostly exchange of ideas, so that you understand what will be the key deliverables, what is going to go into the – or what comes from National for implementation. If I can give an example when the National
10 Development Plan was given the Provinces had to go into a Legotla and say, which is our responsibility as the Free State, and what is the responsibility of what department to implement. If there are deliverables how do we deal with those deliverables? So there you exchange ideas and then Department – out of those ideas you then go and development action plans.

ADV LEAH GCABASHE SC: Please help me understand the difference between an action plan and a strategy that would emerge from a meeting of this nature?

MR MBANA PETER THABETHE: What then happens, from the Legotla
20 each department will then develop a strategic plan. Once the Department has a strategic plan, it means that strategy will then tell how are you going to deal with the implementation of what is required by that particular Department. Once the strategy has been implemented then the Department will then develop an action plan which will have timelines, targets, deliverables, who is responsible to

do what and by which budget. Then that goes to the action plan.

ADV LEAH GCABASHE SC: Now I will explore this again with you a little later in greater detail but just for my broad understanding, the strategic plans are catered for in the PFMA read with the Treasury Regulations, a I correct?

MR MBANA PETER THABETHE: That's correct.

ADV LEAH GCABASHE SC: So there's really a legal responsibility that lies with Departments to prepare these strategic plans?

MR MBANA PETER THABETHE: That's correct.

10 **ADV LEAH GCABASHE SC:** And when you prepare a strategic plan, you call it that, it is called a strategic plan, it's not called something else?

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: I ask this, simply because I will be exploring with you the Mahomo-Mobung strategy and I would want you to place it in context because that strategy appears to have informed the establishment of the Vrede Dairy Project, but Chairman I see that it's just after quarter past eleven, is this a convenient time to have a cup of tea?

20 **CHAIRPERSON:** Yes let's take the tea adjournment, we will resume at half past eleven, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS:

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

ADV LEAH GCABASHE SC: Thank you. Thank you Chairman. Just the last element of the discussion we were having about strategic plans. Can you explain to me where the Mahuma Mobung Agricultural and Rural Development framework 2012 to 2016 would fit in to the discussion we were having just before tea? Because we talking strategic plans, we talking the interface between yourselves and the MEC's. There is a particular framework document I want you just to help us understand where it would have fitted in?

MR MBANA PETER THABETHE: Thank you Chair. The – the Mahuma
10 Mobung Agricultural Development strategy came from the understanding that...

ADV LEAH GCABASHE SC: I am sorry can I interrupt you please Mr Thabethe? You do not have to switch it off you can keep it on – the microphone on yes.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: I actually want you to address the framework because if I point you to page 381 of reference bundle no, so on to your left are reference bundles. If you take reference bundle A – B my apologies.

20 **CHAIRPERSON:** Well Ms Gcabashe you will cause confusion in the transcripts. Exhibit HH Court Records A or Court Records B.

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: It is not the Court Record this time Chairman. We are using the reference...

CHAIRPERSON: Oh those are the only ones that I have got here.

ADV LEAH GCABASHE SC: No to your – behind you.

CHAIRPERSON: The other ones are at the back.

ADV LEAH GCABASHE SC: I believe Chairman they must be there.

CHAIRPERSON: Oh okay.

ADV LEAH GCABASHE SC: Yes. Because they be...

CHAIRPERSON: So which one is it?

ADV LEAH GCABASHE SC: It is B Chairman.

CHAIRPERSON: Reference bundle? HH reference bundle B.

10 **ADV LEAH GCABASHE SC**: Exactly HH reference bundle B Chairman.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: And that would be page 361.

CHAIRPERSON: Thank you. 361?

ADV LEAH GCABASHE SC: Yes this time because the page is facing a different direction Chairman you will find it on your far left top, far left, the page number.

CHAIRPERSON: Oh okay.

20 **ADV LEAH GCABASHE SC**: But it has the title there it is in bold Agriculture and Rural Development Mohuma Mobung and then it has Agriculture and Rural Development framework. I just want to understand what this document is Mr Thabethe. And if it is indeed what you were starting to describe you will simply say so. So what is this framework document? It was drafted as I read this please correct me again if I am wrong. In June 2012.

MR MBANA PETER THABETHE: Thank you Chair. This document was

– was developed to provide a framework under which we will then operate in terms of dealing with specific issues of agricultural development. Those specific issues were in respond to the National Development Plan to be able to say how do we then put a framework to be able to say how are we going to approach in terms of developing agriculture? Then this framework was developed. The problem which could bring a confusion is that there were exchange of words. At some instance we would call it a framework. At one instance we will call it a strategy but it meant the same document to be able to respond to
10 identified issues in terms of developing agriculture.

ADV LEAH GCABASHE SC: In fact at other places you call it an initiative and then there are those who call it a concept. So each time I have a witness from Government – from the Free State Government I try and get clarity on whether it was an initiative, whether it was a concept, whether it was a strategic plan or whether it was simply a framework document. There is a lot of confusion certainly about what exactly the nature of this document was.

MR MBANA PETER THABETHE: Chair it all refers to the same document. The contents or the document are the same. The problem
20 is that it has been given different names like framework, initiative, strategy but it was all in response – the contents of the document talks to the same thing.

ADV LEAH GCABASHE SC: In fact I – I probably should – you deal with it in your May 2018 affidavit but that is the affidavit that is not particularly clear. Maybe I should pursue this particular line of

questioning after lunch in case we are able to find better copies of that document Chairman because he has set it out in that document.

CHAIRPERSON: But what he – what he – what he can be asked is what does he call it? What do you call the document yourself? What is the term that you believe is the most accurate one for this document?

MR MBANA PETER THABETHE: The most appropriate I will say Chair it is Mahuma Mobung Development Strategy.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Though I must point out to you Mr
10 Thabethe that at paragraph 33 of that May 2018 affidavit you refer to it as both a strategy and a concept. But to be fair on the Chairman and to enable him to actually read what is written here in paragraph 33 I – can I – having pointed that out to you I am hoping that by lunch time we have a better luck with a clearer copy of this document. Can I go back to one or two issues that we were dealing with before we started discussing strategic plans and that was just in understanding rural development and agriculture?

CHAIRPERSON: Well before you do that do we put this away or you still need it?

20 **ADV LEAH GCABASHE SC**: I – I think for a minute Chairman because it might be unfair both on you and on him for me to refer him to the affidavit where he – he actually uses both – both terms.

CHAIRPERSON: Okay. Thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. I will go back to a slightly more general question around agriculture and rural

development. Can I give you context? I am trying to understand whether a dairy farm falls within the Department of Agriculture or the Department of Rural Development? I think the Chairman would be interested as well in establishing where a dairy farm and forget the Vrede Dairy Farm just the fact of a dairy farm would it fall within agriculture or would it fall within rural development?

MR MBANA PETER THABETHE: It falls on both.

ADV LEAH GCABASHE SC: Please explain that?

MR MBANA PETER THABETHE: Agriculture Development specifically
10 deals with issues of agriculture whilst Rural Development deals with issues of development over and above Agriculture. It means Rural Development can do development on agriculture. It can co development on issues that are not related to agriculture. Like you can develop a village as part of rural development. So Rural Development would go to the Department of Health and say this particular rural area has a need of a clinic and assist in the development of a clinic. So Rural Development is broader than agriculture.

CHAIRPERSON: Is much more broader?

MR MBANA PETER THABETHE: Yes but you can find a dairy on both.

20 **ADV LEAH GCABASHE SC:** With respect to the idea of a dairy farm who developed that idea Rural Development or Agriculture? Because it happened before the amalgamation of the two departments.

MR MBANA PETER THABETHE: Thank you Chair. The – the Rural Development as a new concept we had to develop how are we going to deal with Rural Development? So initially we started with the develop –

the Rural Development Strategy to be able to say how do we deal with Rural Development? There were a number of issues that you look at hence in order to be able to deal with Rural Development we had to have a kind of a strategy, how are we going to deal with it in the Free State? So it initially started as a Rural Development because it was a new mandate in the Province. We were not very clear what is it that is expected. And the funding part of it was also very difficult because as a new mandate it came without the – the budget. We had then to develop a strategy, how do we deal with it? Because we – we were
10 required to implement and develop rural communities. So we had to find a way of how to deal with it. Hence we had to develop a strategy and we called that strategy Mahuma Mobung. Hence in the beginning when I was saying it is very difficult to separate agriculture and rural development because when you deal with Rural Development you mostly focus on Agriculture Development because those are the activities that are happening in most rural areas is agriculture. But then you have to blend in other activities other than agriculture that you would want to happen in that rural area.

ADV LEAH GCABASHE SC: Now you arrived at the Department of
20 Rural Development in or about August 2011?

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: When you arrived in that department had the concept of

1. Mahuma Mobung alternatively
2. The – a dairy farm been initiated?

Did you find it there the proposal or the concept? Either the one Mahuma Mobung or the other a dairy farm?

MR MBANA PETER THABETHE: Chair I am not sure whether to talk to the dairy in general or to the Vrede Dairy in specific because there were other concepts of dairy other than the Vrede Dairy which were being developed in the Province. concepts of dairy other than the Vrede Dairy which were being developed in the Province.

ADV LEAH GCABASHE SC: I – I actually want you to stay with the timeline Mr Thabethe. The timeline is particularly important because I
10 want us to move from 2011 to 2012 to 2013 to 2014 which is why I ask the question, when you arrived – I will break it up. When you arrived in August of 2011 had the concept of Mahuma Mobung been aired – been ventilated?

MR MBANA PETER THABETHE: No Chair you – maybe let me go back. It was just after when the Department of Rural Development was transferred from Public Works to Agriculture and when that happened then the post was advertised. It means there was a Department of Rural Development transferred which required a HOD. It was advertised during that time and then I was appointed. When I came in
20 there was no plan on the table that says, how do we deal with Rural Development?

ADV LEAH GCABASHE SC: How long did it take you to conceptualise this plan which I assume is the Mahuma Mobung concept?

MR MBANA PETER THABETHE: Chair the name was given by the MEC but the thinking behind the document came from the HOD.

ADV LEAH GCABASHE SC: Now please there are many MEC's.

CHAIRPERSON: That is who?

ADV LEAH GCABASHE SC: I beg your pardon Chairman.

CHAIRPERSON: I am sorry Ms Gcabashe. I think maybe we think of the same questions. The MEC being Mr Zwane and the HOD being yourself?

MR MBANA PETER THABETHE: Correct.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: I would not have guessed Chairman.

10 Thank you. You have to be specific Mr Thabethe. Because you know the people who moved into your job and into the MEC's job after you left.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: And they were acting positions every now and again so it is important actually to be – to be specific. So the concept of Mahuma Mobung would have come from you?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: When did you develop that concept in terms of timeframe? Over what period? You arrive in August. When
20 did you first start talking about this Mahuma Mobung?

MR MBANA PETER THABETHE: Chair I would not be able to give exact timelines because it has been about seven years now since that has happened. But when I came into the Department there was no clear plan. What we had is what was developed at National level. Was a document that was developed at National which was called a

Comprehensive Development Plan which was talking to what are these issues that we need to look at when we deal with issues of Rural Development? But we have to put it into action like development of agricultural parks, like development of agri villages and so forth and so on. So we had as a Province to come with how in the Free State we were going to deal with that. There was also programmes of war on poverty that we had to bring on board to say how do we fight poverty in the rural areas? So we had a – the dairy was but one of those activities that Rural Development had to develop. Because we were

10 also tasked with the responsibilities of developing small towns. Rural Development had also to assist small towns because they were not very viable. There were no activities that were happening. So we also looked at a number of small towns and in each particular town there was an activity that we had developed which – which was fitting to the environment of that particular area. Hence then we had to look at that. Now if you look at a dairy as rural development you do not look at it in isolation without agriculture. If you look at developing an agri-village as Rural Development you do not look at it in isolation without human settlement. Now you bring different departments because we are

20 dealing of issues of rural development and they assist you in that particular area that we have identified as a need either in the village or on the farm or in a small town. So those are the things that will then dictate how do we deal with that. But we needed to have a framework of how do we deal with that?

ADV LEAH GCABASHE SC: Now when you arrived in August of 2011

you have told us when you got to the – to Bloemfontein you have told us that you really started putting the Department of Rural Development together, have I understood you correctly?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: What budget had been allocated to Rural Development under Vote 11 which was the Vote that the MEC at the time Mr Zwane was responsible for?

MR MBANA PETER THABETHE: Chair I would not have the exact figures here in front of me now but it was a very small budget and that
10 budget was transferred from Public Works to Agriculture which then became Agriculture and Rural Development. It was a very small budget. It mainly looked at the – the administration part of the Department. Your salaries, your operations. There was very limited money to be able to do implementation. The very little that we had been allocated was used to develop in rural areas I think we started with the development of community halls because there were no places for communities to hold their meetings when they want to come together. So we had built in a number of villages halls for communities to be able to – so it was a very minimal budget to be able to implement.
20 So you had to piggy back to a number of other departments to be able to implement rural development.

ADV LEAH GCABASHE SC: Agriculture obviously then had the lion's share of the Vote 11?

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Budget?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: When Mr Roy Jankielsohn appeared before the commission he mentioned that in or about November 2011 if I correctly recollect this Mr Mosebenzi Zwane mentioned this concept of Mohuma Mobung to him. So I go back to asking you would that concept have taken root by about November 2011?

MR MBANA PETER THABETHE: That will be correct Chair. We – we were at that particular time doing consultations with a number of stakeholders into the concept so that we get understanding whether we
10 going the correct route or not. So a number of stakeholders in government and in the private sector which also included the legislature. We just went there and we consulted, we presented to them and we were sharing knowledge with them. They made inputs into the document. So at that particular time we were busy doing consultation and getting additional information and comments from other people.

CHAIRPERSON: Were the consultations aimed at getting ideas from stakeholders and the community so that when you then put together a document that would guide the Department that would be based on the
20 ideas that you got from stakeholders and the community and so on? Was that the – the aid or was the position that you were coming to the stakeholders and the community with a certain idea and hearing what they have to say?

MR MBANA PETER THABETHE: Chair it is correct because the first thing to do was to draft – I believe that is why we have a lot of names

for these documents. Somebody had to develop an initiative and say this thing this is how we want to do it. So there was a document on the table and then we then had to consult on this document to get other people's input into that document.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Yes. I am interested in the team you gathered around you to drive this strategy. Who did you have on that team?

MR MBANA PETER THABETHE: Chair by the time I came there were
10 people – the Department had not yet developed fully but the people that were there were people that came with the function from Public Works. At the time when I came there was a Chief Director that was transferred with the function from Public Works to Agriculture and there were a few of other people that came with the function. That was the few people that I had worked with but in terms of the thinking tank because they had also to run around and proceed with some of the work that was started when the function was with Public Works. So there were a number of projects that were ongoing at that particular time. So it was at that time still a very small department with very few people. So we
20 had to – I had an opportunity when I arrived to be able to sit down and conceptualise and get an understanding of what is this Rural Development, put a document on the table, do consultation with the document so that you begin to – to be able to – to do something on the mandate that was given of Rural Development.

ADV LEAH GCABASHE SC: Did you find Doctor Masiteng in office in

Rural Development when you joined the Department?

MR MBANA PETER THABETHE: No.

ADV LEAH GCABASHE SC: Where was he located?

MR MBANA PETER THABETHE: He was in Agriculture.

ADV LEAH GCABASHE SC: Did you find Me Sibahle Dlamini the CFO who ultimately served under you either at Rural Development or at Agriculture when you arrived in August of 2011?

MR MBANA PETER THABETHE: The CFO was CFO of both Agriculture and Rural Development but originally she was the CFO of Agriculture.

10 **ADV LEAH GCABASHE SC:** So the answer is you found her there when you arrived?

MR MBANA PETER THABETHE: I found her there.

ADV LEAH GCABASHE SC: Ms Dlamini.

MR MBANA PETER THABETHE: Dlamini yes.

ADV LEAH GCABASHE SC: But she reported to you even as you arrived?

20 **MR MBANA PETER THABETHE:** She reported to both of us. The HOD Agriculture and the HOD Rural Development. Chair those were the difficulties that we picked up because we were two HOD's but we had the service of one CFO.

ADV LEAH GCABASHE SC: Can I very briefly then ask you about your understanding of what informed the Supply Chain Management Policy document that you approved? So I am going to ask you Mr Thabethe to go to page 332 of Reference Bundle HH – Reference Bundle A. So it is HH Reference Bundle A for Apple.

MR MBANA PETER THABETHE: I have got it Chair.

ADV LEAH GCABASHE SC: Now you signed off on this document Mr...

CHAIRPERSON: What page is the document again?

ADV LEAH GCABASHE SC: It is page 325 Chairman.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE SC: And at page 359 is the signature of the Accounting Officer who approved this SEM Policy document for the Department of Agriculture.

CHAIRPERSON: Sorry Ms Gcabashe have you moved away from the
10 document with different names?

ADV LEAH GCABASHE SC: Yes we have Chairman.

CHAIRPERSON: You have?

ADV LEAH GCABASHE SC: Because I think we will explore that after lunch. Mr Thabethe's legal team are working very hard at endeavouring to get us a clear copy of the May 2018.

CHAIRPERSON: Okay alright.

ADV LEAH GCABASHE SC: Affidavit. So I think...

CHAIRPERSON: Well I meant – I am talking about the strategy, the framework?

20 **ADV LEAH GCABASHE SC:** Yes I am going to go back to that later Chairman because I do need that May 2018 affidavit.

CHAIRPERSON: Oh okay.

ADV LEAH GCABASHE SC: To explore – he has explained it in detail in that document.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: So I think it is fair to him to then take him to what he has already explained in 2018.

CHAIRPERSON: Yes okay alright.

ADV LEAH GCABASHE SC: Yes thank you Chairman. So this is the Supply Chain Management Policy of the Department of Agriculture?

MR MBANA PETER THABETHE: Yes, yes Chair.

ADV LEAH GCABASHE SC: Let us just start there and this is on page 3-2-5. Department of Agriculture - were you Head of Department of the Department of Agriculture in April 2012?

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: Can you explain how you moved, when you moved from Rural Development?

MR MBANA PETER THABETHE: Chair I may not remember exactly the date but what happened was that at the completion of the financial year. The two of us were swapped.

ADV LEAH GCABASHE SC: Please explain two of us Mr Thabethe.

MR MBANA PETER THABETHE: The HOD for Agriculture and the HOD for Rural Development.

CHAIRPERSON: Mention the names as well.

20 **MR MBANA PETER THABETHE:** Which was ...

CHAIRPERSON: You were one.

MR MBANA PETER THABETHE: I was Department of Rural Development and Dr Morose (?) was the HOD for Agriculture.

CHAIRPERSON: And you said at the end of the financial year. Is that the 2011/2012 financial year that you are talking about?

MR MBANA PETER THABETHE: It - it was the 2011/2012 - that is correct Chair.

CHAIRPERSON: Basically at the end of February ...

MR MBANA PETER THABETHE: At the end of ...

CHAIRPERSON: Or March?

MR MBANA PETER THABETHE: Of - of March.

CHAIRPERSON: Of March.

MR MBANA PETER THABETHE: So by - by March the two of us then were - were swapped.

10 **CHAIRPERSON:** *Ja.*

MR MBANA PETER THABETHE: That I become HOD Agriculture. She becomes HOD Rural Development.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: So in April - so at the end of the financial year 31 March you then moved from Rural Development. On 1 April you then had started serving in agriculture?

MR MBANA PETER THABETHE: In agriculture and as accounting officer.

20 **ADV LEAH GCABASHE SC:** Yes. So if you go to page 3-5-9 of the document that you are looking at your signature appears there. Is that correct?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And you have signed off on this document on 1 April 2012?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: When did you get time to read all the provisions in this document and develop it etcetera?

MR MBANA PETER THABETHE: *Ja.* Chair the - this - the Supply Chain Management Policy has a requirement that before the beginning of the financial year a department requires to have a Supply Chain Management Policy because you are going to be spending money and you need to have an understanding on what policy are you going to be guided.

I - I have been exposed to Supply Chain Management even
10 before. So Supply Chain Management Policy which I had an understanding before when I was Rural Development. Remember when - when this policy was being developed it was being developed for both Agriculture and Rural Development. So I had had exposure. So there was no problem in coming in and signing the policy because it was developed for both of us. So hence I was able to sign it on 1 April.

ADV LEAH GCABASHE SC: Now when you signed it on 1 April did you understand the import of this policy document - the importance of this policy document?

MR MBANA PETER THABETHE: Yes I did Chair.

20 **ADV LEAH GCABASHE SC:** Can I take you Mr Thabethe to pages 3-3-5 to 3-3-6 of that document? If you look at Clause 3.3. I - I am assuming you are familiar with the rest of the document preceding this. I really want to focus on procurement above the transaction value of R500 000,00 VAT included.

MR MBANA PETER THABETHE: That is- that is correct.

ADV LEAH GCABASHE SC: Please read into the record what this document requires of those who subscribe to it because they must and therefore comply with it - 3.3.1.

MR MBANA PETER THABETHE: 3.3.1 says:

“Competitive bids should be invited for all procurement above 500 000.”

ADV LEAH GCABASHE SC: Now you would agree that that ...

CHAIRPERSON: I am sorry. I am sorry. Did you say we should go to page 3-3-5?

10 **ADV LEAH GCABASHE SC:** It is page 3-3-5 Chairman.

CHAIRPERSON: *Ja.*

ADV LEAH GCABASHE SC: And then the paragraph is the very - right at the bottom ...

CHAIRPERSON: Oh 3.3.1?

ADV LEAH GCABASHE SC: 3.3.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: He is reading 3.3.1.

CHAIRPERSON: Thank you.

20 **ADV LEAH GCABASHE SC:** Now you would agree with me that that particular clause is consistent with Section 2-1-7 of the Constitution?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Because that section of the Constitution talks of equitableness, of fairness, of competitiveness. It wants transparency. So where you have competitive bids for anything that is valued about R500 000,00 those - that process of inviting competitive

bids would comply with Section 2-1-7.

MR MBANA PETER THABETHE: It - it would accept in certain circumstances.

ADV LEAH GCABASHE SC: I - we will get to that sir. We will get into the exception. One step at a time.

CHAIRPERSON: *Ja, ja* but let him answer the way he answer - he wants to answer. He ...

MR MBANA PETER THABETHE: Chair ...

CHAIRPERSON: *Ja*, what is the answer?

10 **MR MBANA PETER THABETHE:** Chair - Chair it will be - it will be applicable except in certain circumstances.

CHAIRPERSON: Okay, alright and then in - in due course you may deal with the - the exceptions.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Thank you Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Of course this process is supported by not just the PFMA but Treasury Regulations, instruction notes, practice notes. You are happy with that?

20 **MR MBANA PETER THABETHE:** That is correct yes.

CHAIRPERSON: But do you accept do you not that 3.3.1 as it stands alone and maybe when you read it with something else it might be a different meaning - meaning. It might have a different meaning. It might be qualified but as it stands says:

“Competitive bids should be invited for all

procurement above 500 000.”

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: That on the face of it, it does not allow exceptions?

MR MBANA PETER THABETHE: Exceptions, yes.

CHAIRPERSON: *Ja*, okay.

ADV LEAH GCABASHE SC: If we go over the page to 3.4 please read that clause into the record.

MR MBANA PETER THABETHE: Urgent and emergency cases which his 3.4.

10 “This is a case where early delivery is of critical importance to avoid a dangerous or a risky situation and the inviting of competitive bids will delay immediate service rendering. Lack of proper planning must not be seen as an urgent case. Reasons for such a request must be properly motivated, approved by the accounting officer or his or her delegate as per the Supply Chain Management delegated powers.”

ADV LEAH GCABASHE SC: What do you understand by that clause?

20 Just in your own words.

MR MBANA PETER THABETHE: It - it is actually saying Chair urgent and emergency cases may deviate from the - the one that we have just read.

CHAIRPERSON: I am sorry. Just repeat that sentence - that answer.

MR MBANA PETER THABETHE: The answer is my understanding is

that when there is an urgent or an emergency case you may be required to approve a deviation from following the competitive bids that has been indicated.

ADV LEAH GCABASHE SC: Yes. Now I want to explore this concept with you at this point. It speaks of the accounting officer or his or her delegate approving a properly motivated request. Yes?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And I - I am deliberately staying with urgent and emergency cases. Where the accounting officer himself or
10 herself initiates a request under the urgent and emergency cases is it correct for that person to be a player and a referee? That is to initiate and to approve because they have decided this is an emergency. I - I am using this as a very theoretical example.

MR MBANA PETER THABETHE: Chair if - if you may repeat the question.

ADV LEAH GCABASHE SC: Where - I am using this particular example - there is an emergency in an area. Is it appropriate for the accounting officer to be the person who both initiates this deviation under urgent and emergency cases and having initiated it approves it because he or
20 she happens to be the accounting officer?

MR MBANA PETER THABETHE: Let - let me explain it differently maybe and put an example.

ADV LEAH GCABASHE SC: No problem.

MR MBANA PETER THABETHE: Let - let me use a situation where there is an outbreak in agriculture. Maybe avian flu as an example.

The - the accounting officer comes and says we have a problem. We need to go and acquire vaccines. You then go to the report that has been provided to you. You do consultations at the - at what extent and how difficult and what damage can - can be caused.

Then you are able to come back to the department and say we will - we will have to deal with the situation urgently. We need to prepare a deviation from the normal procurement process so that we can address the situation. So at - at - as - as an HOD you need to be very clear in your mind how are you going to deal with it so that you
10 can deal with the situation given.

ADV LEAH GCABASHE SC: I would have thought Mr Thabethe that because you are not the only employee or public functionary in that department that the people who support the HOD would be the ones who initiate who come to the HOD with that report you refer to. So they work out in the field there has been a flood. There is avian flu. They would pick it up not the HOD.

They would then prepare the correct documentation and say to the HOD in my area that I supervise there is this problem. Could you please release funds or help one way or the other and you would then
20 look at this as now the HOD and accounting officer and say it is an emergency. That flooding - that avian flu must be dealt with and you then approve.

So all I am saying is I would not expect the HOD to be the one who is out in Thabo Mofutsanyana wherever else to then be the same person who both initiates - that is why I am saying is a player and

signs off - referee - on a particular proposal.

MR MBANA PETER THABETHE: You are correct Chair. It is one of the options. When - when you have a situation one option is you would go to a meeting all of you and say we have this challenge and then in dealing with the challenge as a meeting you will agree how to approach it and then when it comes to the development of the document that ends with the HOD to approve it is something that you have discussed and agreed in the meeting.

10 All that happens is that the required official will then go and develop the document that has been discussed. It is not the document that will still sit and say what is this, what informs it because you have been part of the meeting. You have agreed on how to deal with it. By the time it comes to you, you read it and you understand what the documents talk about. Then you improve it - approve it.

ADV LEAH GCABASHE SC: You see my difficulty with that proposition with the explanation you are giving us is that it opens that door that leads to the abuse of a modality of a provision that is intended to be used in compliance with the Constitution Section 2-1-7. Would you agree with me?

20 **MR MBANA PETER THABETHE:** Chair in - in all normal circumstances the HOD will not do that. He will allow the process to flow normally. It is only when there is an exception where he will then need to understand and in - in most instances those are - those issues are being discussed in meetings. It will not be for the first time that the Head of Department will see a document coming in and read it and it

would have been discussed in the department. So he will have an idea.

ADV LEAH GCABASHE SC: I think the only issue I take with you on this Mr Thabethe is that my proposition presupposes that somebody else - the idea to use the urgent and emergency cases provision comes from a junior field officer or somebody else and it is brought to you for your consideration, for you to apply your mind to it and then either to approve or to disapprove that expenditure.

What you are describing is a situation where you as the Head of Department are sitting with me and a couple of other public
10
functionaries who report to you and we are discussing whether or not in my hometown relief should be given under this particular Head because the pressure - you are the boss.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: You cannot run away from that. You are sitting with the boss. He has strong views and this is why I say it then opens that door to a manipulation of the system if the boss himself is part of the initiation of a particular deviation. Would you agree with me?

MR MBANA PETER THABETHE: Chair I would - I would not - not
20
always.

CHAIRPERSON: I understand why you would not.

MR MBANA PETER THABETHE: I would not Chair.

CHAIRPERSON: I - I think I understand why you would not because I think that as a Head of Department you may be required not just to be sitting in - in the office. You may be required to be out there where

things are happening sometimes especially if you think about floods.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: You know and when people are talking Ms Gcabashe about what do you do about these floods the HOD is not going to say hey let me get out of this meeting because I will be required to approve. Talk alone and come back to me later you know. So that - that is one of the things that is coming to my mind as you ask the question you know but you were going to give your own explanation why you do not agree. **MR MBANA PETER THABETHE:** *Ja, ja.* Chair

10 let - let me give another scenario. There - there are instances where the Head of Department has to take a decision on site. Now I have done that on a number of occasions in terms of veld fires. You require a chopper to assist with the extinguishing of the fire. You do not have a submission - you do not have to wait for a submission because the fire is not going to wait for you to approve a submission to deviate.

All you do you take your phone. You phone the owner of the chopper. You ask the person to fly the chopper and extinguish the fire. When you get to the office you require the officials to do the submission and give it to you for approval because you have acted
20 instantly. Those are some of the requirements that you are to do.

So you will not always require somebody to develop a submission to approve before the action happened. There are those activities that you have to instruct. They happen and you deal with the - with the action.

CHAIRPERSON: Well Ms Gcabashe you - you will take this - you will

take the answer further if you want to and probably would like to but even that situation Mr Thabethe I do not see why if you are the one as HOD who was on the scene who made the judgment call there and then because if you were going to follow certain processes and wait for people to make submissions to you.

By the time that process was finished somebody house would be destroyed. If you made the judgment call there and then and it was the right judgment call I do not understand why when you come to the office you must say somebody else now must make a submission and
10 pretend as if there is a submission that was made to you when there was no submission.

It seems to me it ought to be enough that in that situation you make a report that says this is what happened and in the circumstances it was justified to make this decision. This is the decision that I made and you are right - you are either right or wrong but that is it. I also would not understand the idea of going to the office and say somebody must now make a submission because you - you made the decision there and then.

MR MBANA PETER THABETHE: I - I agree with you Chair but there is
20 still a paper trail that will be required. They normally call that *ex post facto*. You approved after the action but there is ...

CHAIRPERSON: But now if for example the officials from whom you would normally receive the submissions were not there but you were there and you made the decisions. Who are you going to receive the submissions from because otherwise will they be truthful if they talk

about something that they know - they do not know anything about?

I would have expected that they must - you must be able to simply record what happened. This is what happened. This is the decision I made and the framework must be such that it permits in certain circumstances - urgent circumstances for decisions to be made like that. Otherwise if you are going to follow certain procedures in those circumstances by the time you - you are through with - you - you are completely - you have completed the processes many houses have - have been destroyed by fire.

- 10 **MR MBANA PETER THABETHE:** I - I agree Chair. The - the - that has happened before where you - you had taken a decision. You come back to the office. The required official refuses and you have to leave with an unauthorised expenditure because the process determines that there has to be an approval. Sometimes the - the reasoning becomes a problem.

They need a document on the table where you have approved because you have spent money and there has to be a document. If there is not such a document the classification becomes unauthorised expenditure.

- 20 **CHAIRPERSON:** I mean if you are sitting in your office as Head of Department and somebody comes into your office running and says there is fire in the building I mean are you going to say let us have people bring in submissions before you bring somebody who is going to - to extinguish the fire. Maybe the fire needs something more than just a hosepipe or will you just phone somebody and say please get the fire

engine to come here. Let those red - red trucks ...

MR MBANA PETER THABETHE: I - I agree with you Chair. What I am trying to highlight is some of the difficulties that we have in following the procurement processes. We - we have had a number of engagements with National Treasury giving them some practical examples on the ground that at times give us challenges in dealing with them.

Some - some of the irregularities that are there at the face value you may think something has not been properly done but if you go to the details of what actually happened because if you look in
10 general this department had so much irregular expenditure but if you were to dig into the details of each one what informs these irregularities.

You realise that some of these are valid but you cannot substantiate it because you did not have the required document. That - that is the difficulty we - you would normally have.

CHAIRPERSON: Yes. No thank you.

ADV LEAH GCABASHE SC: In ...

CHAIRPERSON: Ms Gcabashe you - you must - may still be having
20 some questions to - because it is an - it is an important part ...

ADV LEAH GCABASHE SC: It is Chair.

CHAIRPERSON: Of - of this. So you need to satisfy yourself that you have dealt with it properly.

ADV LEAH GCABASHE SC: Indeed. Thank you Chairman. You see Mr Thabethe the way - the example that the Chairman uses is an

excellent example of a Head of Department being transparent, taken accountability and being open about where the idea to deal with the problem that has emerged came from.

MR MBANA PETER THABETHE: *Ja.*

ADV LEAH GCABASHE SC: It is an excellent example of accountability and that is what an HOD is. He is an accounting officer. He has got to take accountability. So he cannot ask a junior officer to write up the paperwork when he knows that he is the one who actually recognised there is a problem, went out and said we - we have got
10 provision 3.4 in the SCM.

We are going to use this urgent and emergency cases. Would you not agree with that proposition?

MR MBANA PETER THABETHE: Chair if - if I were to agree with her it would mean that it will then become an obvious case where you - it may even open up a number of cases where the HOD may just decide what should happen.

ADV LEAH GCABASHE SC: But you see that is exactly what the HOD does in the circumstances you described. The difference is the HOD is putting form over substance. The HOD is making it look as if the
20 initiator is somebody else. Whereas substantively in essence it is actually the HOD's idea that this particular thing should go this particular way.

MR MBANA PETER THABETHE: Chair - Chair the - it - it all depends where the budget that you want to spend is located. That - because - because in the HOD's office there is no budget to - to do those things.

So you - you have to have somebody who has a direct responsibility of that budget to agree and make a submission that indeed I agree that this money should be spent for this particular purpose.

So that person - because the person sits - he become the - the person who should be able to account on that particular budget and when you have to decide you have to talk to the person who has that responsibility. In other instances the person may say no not my budget. It cannot be used for that particular purpose. So if the person agrees says okay I agree this has happened or this can - can be done
10 using the budget that is sitting with me.

I am hereby making a submission to you to agree that this money should be used for that particular purpose because the budget is not sitting with the HOD.

ADV LEAH GCABASHE SC: You, with respect Mr Thabethe, I know you are a very senior member of government, the point you are missing is that at the end of the day the HOD as the accounting officer, you described that to us earlier on, is the person who can determine the budget for particular units, the same person who can select the unit that he or she thinks this money must come from. I think you under-
20 estimate the influence of HOD's.

CHAIRPERSON: And maybe Ms Gcabashe could add that the person who within the department who has a budget from which the HOD thinks funds for a certain matter should come, would I would imagine not be able to overrule the HOD. That's my addition.

ADV LEAH GCABASHE SC: Do you want to respond to the

Chairman's addition?

MR MBANA PETER THABETHE: Ja Chair if – the, the, the – I want to use the correct word, the PFMA legislations does not cater for an instance where the HOD can decide and approve, it says the HOD must approve, the HOD must approve, it is different from when the HOD comes and say I am writing to Treasury, I am shifting this budget from this function to another function, even that the HOD must still write to Treasury, to say I am shifting so much money from you to you, so that it can also be done on the – so even the shifting somebody must approve,
10 somebody above the HOD must still approve so there must still be a paper trail, so there isn't an instance where money can be moved or spent without paperwork.

CHAIRPERSON: Ja, well continue.

ADV LEAH GCABASHE SC: Chairman I think we should actually move to the nub of the issue.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Which is Clause 3.5. I really was just trying to have a neutral discussion about what's transparency, what is expected when you are being transparent and accountable, but let's
20 look at 3.5, please read those provisions into the record, because those are the provisions that relate directly to the matters around the Vrede Dairy Farm.

MR MBANA PETER THABETHE: Ja Chair can I mention something before I move to that?

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: In an instance where the budget is gazetted differently because I want to come to this particular situation, when a budget is gazetted for an example for salaries and wages, you don't follow any of these processes to spend the money, you pay the salaries, you don't do quotations, you don't do deviations, because a gazette allows you to spend the money differently. Why I am using this in the case of the Vrede Dairy the budget in the ...[intervenes]

CHAIRPERSON: May, I'm sorry Mr Thabethe, when you say the gazette allows you to spend the money differently, that might sound – that
10 might give an interpretation which I don't think you intend, I don't think you mean that the gazette allows you to spend money set aside for salaries and wages for something else.

MR MBANA PETER THABETHE: No, no, no.

CHAIRPERSON: Ja, but when you say differently that's what I think it mean.

MR MBANA PETER THABETHE: Ja, I don't mean that, I mean differently from the bid specifications as given in the PFMA.

ADV LEAH GCABASHE SC: Oh Mr Thabethe bid specifications for salaries?

20 **MR MBANA PETER THABETHE:** Chair can I explain?

ADV LEAH GCABASHE SC: Yes please.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: What I am trying to say is that if you read this in general you may also ...[intervenes]

CHAIRPERSON: The policy?

MR MBANA PETER THABETHE: The policy.

CHAIRPERSON: Ja.

MR MBANA PETER THABETHE: You may think that the money that has been allocated has got to go through this process.

CHAIRPERSON: All money.

MR MBANA PETER THABETHE: All money.

CHAIRPERSON: Including salaries and wages?

MR MBANA PETER THABETHE: Including salaries and wages.

CHAIRPERSON: Alright.

10 **MR MBANA PETER THABETHE:** That's what I am trying to say and then what I am saying is that ...[intervenes]

CHAIRPERSON: But you are saying that doesn't apply to salaries and wages?

MR MBANA PETER THABETHE: And wages.

CHAIRPERSON: Okay right.

MR MBANA PETER THABETHE: Hence I want also then to bring the money that has been gazetted under transfers maybe I must give a history on the transfer.

ADV LEAH GCABASHE SC: Chairman that's a huge topic.

20 **CHAIRPERSON:** Ja, I think ...[intervenes]

ADV LEAH GCABASHE SC: On its own and a very important one.

CHAIRPERSON: I think try and answer the question that Ms Gcabashe has put and if you need to in your answer accommodate a certain context do that but it helps if the answers are brief and to the point, but when I say that I don't want you to feel that you are being stifled in

answering but if you – if they are too long and general sometimes it might prolong the proceedings unduly, so maybe let her repeat the question, see if you are able to answer it without going too much into other issues which she may be planning to deal with in due course, but if you feel that the answer you give doesn't adequately convey what you want without you want to convey without you mentioning something – let's try and see that, okay, so I think Ms Gcabashe will repeat the question, you see if you are able to answer it briefly but as I say if you feel that answering it in a certain way restricts you let's see how we
10 can handle that.

So one we don't want to restrict you unduly but at the same time I don't want to have a situation where one simple question ends up with too long an answer, you understand?

MR MBANA PETER THABETHE: I understand Chair.

CHAIRPERSON: Okay alright, we will give it a try and see how it goes. Ms Gcabashe do you want to repeat your question so ...[intervenes]

ADV LEAH GCABASHE SC: Can I rephrase it Chairman?

CHAIRPERSON: Ja, okay.

ADV LEAH GCABASHE SC: What I am exploring with you Mr
20 Thabethe is Clause 3.5, I had asked that you read that into the record, because I had moved away from the urgent and emergency cases in scenario. You then asked to give a different example and you articulated the position with salaries etcetera, but can I explore just that little element with you, you see the reason I started with Section 217 of the Constitution as we started this morning is because 217

informs all the other procurement legislation that governs what HOD's do, and policy documents such as this, so 217 speaks of contracts for goods and services and when it speaks of contracts for goods and services I don't believe that it has my salary as a Chief Director in mind, there is a process for dealing with my salary, merit awards etcetera, as a Chief Director. It really is talking about the type of contract you entered into with Estina would you agree?

MR MBANA PETER THABETHE: Ja, Chair that is exactly the reason if I was to read this in general I wouldn't have a problem, but if I had to
10 read this in relation to Vrede Dairy that is why I have a problem because I have a different interpretation to the question.

CHAIRPERSON: Okay, if the question requires you to give your understanding of what this clause means you're dealing with it in general, if the question links that, this clause to Vrede Farm then you answer it in the context of Vrede Farm.

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Before we get to Vrede Farm please just read the provision into the record.

20 **MR MBANA PETER THABETHE:** Okay thank you Chair. The item 3.5 deviation from bid procedures the Accounting Officer may dispense with the prescribed processes and authorise the acquisition of any goods and services through any convenient process. 3.5.1, if in a specific case it is impractical to invite competitive bids, eg in urgent or emergency cases or in case of a sole supplier the goods or the services

may be procured in accordance with Treasury regulations 16A, 6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the Accounting Officer. 3.5.2, in the case of a sole supplier an original affidavit from the company stating that it is a sole supplier of the goods/services offered must be provided with the offer . In exceptional cases such as repairs and maintenance of equipment, plumbing services, school uniform, medical services and medicines, school activities, burial services and gasoline for equipment where it is impractical to follow the prescribed procedure one quotation
10 is required.

ADV LEAH GCABASHE SC: Now I come back to the fact that your signature was appended to this policy document.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: You would not have signed this document had you not clearly understood the deviation processes that are permitted, in terms of your own document.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: You would also have been aware of the content of Treasury Regulation 16A 6.4 which permits deviations, am I
20 correct?

MR MBANA PETER THABETHE: That's correct.

ADV LEAH GCABASHE SC: You would also have been aware of any practice note or instruction note that would have been issued by National Treasury explaining how deviations should be treated.

MR MBANA PETER THABETHE: That's correct.

ADV LEAH GCABASHE SC: Let's go to one of those instructions because it really is there to assist HOD's apply the law and certainly the policies they draw or develop that must comply with the law.

MR MBANA PETER THABETHE: Chair?

CHAIRPERSON: Yes?

MR MBANA PETER THABETHE: If I may check here because we are going to move now to the practice notes.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: We are talking about this in general.

10 **CHAIRPERSON:** I think the questions will indicate if it is general or not general, so when it is specific you will know because the question will indicate it is specific. I think you may have a particular part that you want to be alert when it comes to it, so – but she will get there.

MR MBANA PETER THABETHE: Thanks Chair.

ADV LEAH GCABASHE SC: I am on the general, you know it is always easier to work from a general to a specific proposition because the general applies across the board, and we will get to your exception, I am not going to avoid it.

MR MBANA PETER THABETHE: Okay good Chair.

20 **ADV LEAH GCABASHE SC:** And we will debate that, and the Chairman will intervene I am sure as we debate that.

CHAIRPERSON: But maybe before you proceed Ms Gcabashe Mr Thabethe you signed this policy, I find it interesting that it says in the case, that is 3.5.2 in the case of a sole supplier an original affidavit from the company stating that it is a sole supplier of the goods or

services offered must be provided with the offer. I mean why do you want the person who wants to be contracted to be the one who must say don't worry about others, I am a sole supplier. Shouldn't you – should it not say you must establish that that is the sole supplier, but you as the HOD must have your own way of verifying that that supplier is a sole supplier, why do you have to say – they are looking for work from you but you say they must be the ones who tell you we are the sole supplier.

MR MBANA PETER THABETHE: Chair the reason why that – the
10 person you are still required to do an investigation, but the person must confirm.

CHAIRPERSON: But the policy does not talk about you doing your own homework, it says you must have an affidavit from the supplier saying I am the sole supplier, so in other words if you have got that affidavit it is like you have done your job, you don't have to check elsewhere whether that's true.

MR MBANA PETER THABETHE: Chair if I may respond to that honestly, it comes directly from the PFMA.

CHAIRPERSON: Well that may be true, because well you may or may
20 not have watched, I have had people, witnesses come here particularly in regard to Transnet dealing with various issues of supply chain management and referring to the PFMA, but there are certain things that I do not understand you know, and I think this one about the sole supplier is also one of them, I think I had quite some discussion with the Acting CEO of Transnet, Mr Mahommedy I think if I am not

mistaken, because I mean I was saying to him what is wrong if you as an Organ of State issue a public notice to say we need, this is what we need, because if indeed there is only one supplier for the goods you are looking for, that is the only supplier who will respond and then you will know it is only one supplier, then where you say let me not issue a public notice because I think there is only one sole supplier and you can ...[indistinct] but that's – I am just indicating some of the debates I was having with them and it may be that it is just something in the PFMA and not in a particular policy and as you say maybe you got this

10 from the – from some of the instruments but it just seems strange to me you know because if I think I know him he is an ingénue in this room and I think he is the only ingénue I say okay I don't give anybody, I don't give notice to the public. I say okay you do the job, somebody else could come later and say I am also an ingénue and I was sitting in the room when you appointed this one, but if I had issued a public notice everyone who is an ingénue would have said I am interested, but anyway, you may or may not have something to say, I'm just indicating to you that some of the things might be in the PFMA but I have certain issues I don't understand well, but maybe it is because I don't deal with

20 PFMA matters as much as some of you have dealt with as senior government officials.

MR MBANA PETER THABETHE: Ja, thank you Chair, my understanding has been that we differentiate between a supplier and a distributor, because you may have one supplier and a number of distributors, if I may be allowed to use an example, when we had to buy

vaccines for animals the Onderstepoort Biological Institute becomes the only supplier in the country of those vaccines, but you have a number of distributors in different towns, then their understanding is that if you talk of a supplier if you want to buy directly from Onderstepoort then you ask Onderstepoort to say are you the only one who is the supplier of this, but you will find that in every town there is a vet clinic that sells that but they are the distributors, not the suppliers, so my understanding has always been that of a supplier and a distributor there should be a difference.

- 10 **CHAIRPERSON:** Yes but depending on what you want I mean I don't know the details, but maybe it might be convenient or cost effective to get a particular thing from somebody else rather than the original supplier, I don't know, maybe for emergency rather than go to a supplier who is 600 kilometres away and there's a distributor who is 100 kilometres away and the cost and so on, I don't know, but obviously if you are sure of your facts that this is a sole supplier you might be fine but the problem is what if you have got your facts wrong and you didn't give a public notice and if you had given a public notice somebody else would have said I am also a supplier, he is not the only
- 20 one, she is not the only one, but let's move on to something, these are debates that may be interesting maybe for other purposes and maybe academic if the prescript say so, if it's the sole supplier that's what you do, and if you do that you have complied, that's it.

ADV LEAH GCABASHE SC: I actually Mr Thabethe want to point you to practice note number 6 of 2007/2008 you will find it at flag number 8,

in the legislation bundle and the one that's (A), legislation bundle (A).
Legislation bundle (A), flag number 8, the title of this particular practice
note, it is practice note 6 of 2007/2008.

CHAIRPERSON: I'm sorry you said what's the divider?

MR MBANA PETER THABETHE: It's flag number, divider number 8
Chairman.

CHAIRPERSON: Thank you. Yes?

ADV LEAH GCABASHE SC: And I deliberately choose this one
because the year it came into effect would have been 2007, it says so
10 on the last page, these are not numbered Chairman, simply because we
keep adding to them as we lead evidence.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Now what this practice note
...[intervenes]

CHAIRPERSON: I see that the – oh I see you did not give them page
numbers for that reason?

ADV LEAH GCABASHE SC: For that reason Chairman because we
keep adding in a chronological order, but if it is going to be more
convenient for you Chairman for us to number them you now then they
20 have to go from one to ...[intervenes]

CHAIRPERSON: Well depending – what you could do because when
for purposes of the transcript it is convenient if one can say what page
one is going to, what page number. It may be that there's a certain way
of pagination that can be used that would not – that would still address,
take care of your concern, I'm not sure.

ADV LEAH GCABASHE SC: We thought this would Chairman because if you look at one of the others I will be pointing at it's actually at divider number 10, so we've added to that.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: So we've got a 10.1, 10.2, 10.3, per document though, not page numbers.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABASHE SC: But I think we will try and apply our minds.

10 **CHAIRPERSON:** That might be fine, per document.

ADV LEAH GCABASHE SC: Per document Chair.

CHAIRPERSON: That might be fine for your purposes, I think one of these days I preferred something that was from beginning to end in terms of numbering, but if it's easy to find by virtue of the divider then it's okay, but anyway that's fine, this is on the two page document.

ADV LEAH GCABASHE SC: It is a three page document Chairman.

CHAIRPERSON: Oh, three page ja.

ADV LEAH GCABASHE SC: Yes, and again of course it deals with procurement of goods and services.

20 **CHAIRPERSON:** And it is the only document under divider 8?

ADV LEAH GCABASHE SC: It is the only document under divider 8.

CHAIRPERSON: Yes, I think that's helpful ja.

ADV LEAH GCABASHE SC: Yes, and at paragraph 2.3 it of course reiterates that Treasury Regulation 16A, 6.4 provides for deviations. At paragraph or clause 2.5 on the next page it asks accounting authorities

or an accounting officer to ensure that the resources required to support the strategic and operational commitments of an institution are properly budgeted for and procured at the right time, so you must – we have now moved away from the emergency scenario, we are at just where this particular person by way of example or company, sole supplier the accounting authority must budget properly for this, that’s what 2.5 essentially says, I am paraphrasing. 2.6 also requires accounting officers or accounting authorities to put in place their own control measures. These measures may include the arrangement of
10 strategic or specific term contracts with suitable service providers with the view to ensuring that the required goods and services are available immediately when cases of emergency occur. 2.7 deals again with Treasury Regulation 16A 6.4. Most importantly Clause 3.1 under the heading “Reporting of Goods and Services Procured in terms of Treasury Regulation 16A 6.4 reads as follows:

“With effect from the date on which this practice note takes effect accounting officers and accounting authorities are required to report within ten working days to the relevant Treasury and the Auditor General all cases where goods and
20 services above the value of R1million VAT included were procured in terms of Treasury Regulation 16A 6.4.”

3.2 over the page reads as follows:

“The report must include the description of the goods and services, the names of the suppliers, the amounts involved and the reasons for dispensing with the prescribed competitive

bidding process.”

This is in 2007 that this prescript was issued. You were aware of it when you signed signed the SCM policy document in 2012, were not you?

MR MBANA PETER THABETHE: Chair I – this practice note talks about procurements of goods and services, hence I wanted to come in earlier on because what we are talking about here talks to the procurement of goods and services, money that has been budgeted under goods and services.

10 **CHAIRPERSON:** Yes, but you may be jumping the gun. The question is whether when you signed the supply chain management policy you were aware of this practice note, that’s the question.

MR MBANA PETER THABETHE: Yes, I was Chair, maybe I am jumping the gun.

CHAIRPERSON: Yes I think you are.

MR MBANA PETER THABETHE: To go to Vrede.

CHAIRPERSON: You must wait until that question is put to you, don’t answer it beforehand.

MR MBANA PETER THABETHE: Okay.

20 **CHAIRPERSON:** Okay.

ADV LEAH GCABASHE SC: It is like building a house Mr Thabethe, brick by brick.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Chairman I have a 2011 practice note but I can probably start with it after lunch, or just conclude with it whatever

is convenient to the Chair.

CHAIRPERSON: Well concluding with it would take how long?

ADV LEAH GCABASHE SC: One minute Chair.

CHAIRPERSON: Ja, let's do that then.

ADV LEAH GCABASHE SC: The other one that you must have been aware of Mr Thabethe is at flag 10.2 so you will see on the side there are sticking out 10.1, 10.2, so it's divider 10 and then the three little ones.

MR MBANA PETER THABETHE: Okay.

10 **CHAIRPERSON:** Well I'm just thinking now Ms Gcabashe that when you said one minute you might not have meant it literally.

ADV LEAH GCABASHE SC: It's the Setswana one minute Chair.

CHAIRPERSON: (laughing) it might end up being much more than so maybe we should take the adjournment and then you can start on it when we come back.

ADV LEAH GCABASHE SC: As the Chairman pleases.

CHAIRPERSON: We will take the lunch adjournment now and we will resume at two o'clock, we adjourn.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Are you ready?

ADV LEAH GCABASHE SC: I am Chairman but Mr Fourie would just like to address you for two minutes.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: On the efforts he has made at trying to find a clearer document for us.

CHAIRPERSON: Oh yes, yes thank you. Yes.

MR HERMAN FOURIE: Thank you Chair.

CHAIRPERSON: Any luck?

MR HERMAN FOURIE: Chair some good news. We managed to obtain an unsigned affidavit. My partner and myself we have gone through the affidavit briefly and I indicated to my learned colleague as well we are willing to provide the – everyone concerned with the relevant affidavit
10 under the express condition I think you will agree if there are any differences between the affidavit that he has indeed signed and the affidavit that we are providing that the affidavit that is signed persists that will then afford us and Mr Thabethe then this evening to go through both of the affidavits to make sure that they are in order and at that stage I think tomorrow morning we can quickly confirm that it is indeed the same affidavit and then we can confirm accordingly. We also have managed to obtain annexures. So we will make sure that at the very latest tomorrow lunch time that they will be available for everyone to assist.

20 **CHAIRPERSON:** Excellent I think that is very good. Thank you very much for those efforts. That condition is reasonable that until you have had a chance and Mr Thabethe has had a chance to compare the two affidavits, the signed one and the unsigned one to see that they are excellent the same until that happens if there is any inconsistency between the two the one that is signed will be taken to prevail and if

you confirm tomorrow that they are exactly the same then – then that will be that.

MR HERMAN FOURIE: Thank you Chair. My pleasure.

CHAIRPERSON: But – and also about the annexures I think that is very helpful because there were quite a lot of annexures that are not legible as well. But – so tomorrow is still fine.

MR HERMAN FOURIE: And just on that point of the annexures Chair if there are certain other annexures.

CHAIRPERSON: Yes.

10 **MR HERMAN FOURIE**: That are referred to.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: The door is still open we can provide them at any time if the – even if Mr Thabethe has finished his testimony.

CHAIRPERSON: Okay excellent. I think I can say certainly for myself any document that is shaded in the same way that the affidavit is shaded if you could – if you can get a clearer copy or that would be very helpful. And there may be others which are not shaded in the same way but the whole page is really black or very dark. So those two should be looked at and – and even after the hearing – even after he
20 has finished his evidence if need be. But anything that can be obtained before that would be helpful so that one avoids if possible having to bring him back just because when he was giving evidence certain documents were not legible.

MR HERMAN FOURIE: I think in that regard we will be – we will be led by our colleagues.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: Other than the documents that we have annexed to our affidavits Chair.

CHAIRPERSON: Yes, no thank you very much that is very helpful. Thank you.

MR HERMAN FOURIE: Thank you.

CHAIRPERSON: Thank you. Thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Thabethe switch your microphone on please. Thank you. I had intended just before we
10 broke for the lunch recess to bring your attention to practice note – no it is an instruction note on enhancing compliance, monitoring and improving transparency and accountability in Supply Chain Management. This is the document that you have I believe it was at divider 10 and it is labelled 10.2. And I will really just bring one paragraph to your attention for your comment and that will be paragraph 3.1.1.

CHAIRPERSON: Did you say 3.1.1?

ADV LEAH GCABASHE SC: 3.1.1 Chairman.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABASHE SC:** Could you please read that into the record 3.1.1 and having done that explain to the Chairman what you understand of just that one clause?

MR MBANA PETER THABETHE:

“Submissions of procurement plans in respect of advertised competitive bids [demand management].

Accounting Officers of departments and its constitutional institutions must submit to the relevant Treasury by 30 April of each year. A procurement plan containing all planned procurement for the financial year in respect of procurement of goods, works and or services which exceeds R500 000. All applicable taxes included. This procurement plan must be approved by the Accounting Officer or his or her delegate prior to its submission. For the 10 2011/2012 financial year the said plan must be submitted to the relevant Treasury by not later than 31 August 2011.”

ADV LEAH GCABASHE SC: Yes now the date of this particular instruction note is the 31 May 2011. Again would it be an instruction note that would have been brought to your attention?

CHAIRPERSON: The question is whether you were aware of this instruction note at the time when you started on 1 April 2012 as the HOD or Accounting Officer for the Department?

MR MBANA PETER THABETHE: Not Chair.

20 **CHAIRPERSON:** Or soon thereafter – maybe it not be on that date but in April?

MR MBANA PETER THABETHE: Not Chair. Why I am saying so mostly the instruction notes becomes the documents that are in the custody of the Chief Financial Officer. Mostly those that will be relevant then she then or he can advise but the understanding is that each Head of

Department should be aware of all instruction notes.

ADV LEAH GCABASHE SC: I would have thought so too Mr Thabethe especially given your particular circumstances where you actually signed off on the SCM Policy document in April 2012. So the expectation would be that you would really make sure you knew what you were signing

1. Because you were a new broom in the department.
2. Because you a senior civil servant really or public servant.

Am I not right?

10 **MR MBANA PETER THABETHE:** You are correct Chair. The instructions notes when they arrive they get to the Head of Department. You go through them and you pass them through to the relevant official. You may not remember all of them at a glance. As you have read it through and then passed it on.

ADV LEAH GCABASHE SC: But this one is particularly important because it speaks of a procurement plan and when anybody speaks of plans whether they are procurement plans or any other form of plan the HOD would always be involved in that or have I got it wrong?

20 **MR MBANA PETER THABETHE:** It is correct Chair. It clearly indicates that it has to be approved by the Accounting Officer which means that plan should have been seen by the Accounting Officer before it goes to Treasury.

ADV LEAH GCABASHE SC: Absolutely. But I think that we are more or less agreed Mr Thabethe that at your level of operation in government you would have been familiar or you ought to have been

familiar with all the prescripts relating to financial matters. Certainly to procurement which is what we are about today. We are in agreement on that?

MR MBANA PETER THABETHE: Yes Chair I agree over and above that the – it is prescribes that the CFO should also be there to advice the HOD.

ADV LEAH GCABASHE SC: Yes.

MR MBANA PETER THABETHE: So I agree.

ADV LEAH GCABASHE SC: The CFO...

10 **CHAIRPERSON:** I am sorry before you proceed further. I just wanted to say for what it is worth I note that

1. This instruction note is addressed to all Accounting Officers of all National Departments and Constitutional Institutions that is 1.
2. Accounting Authorities of all Schedule 3A and 3C Public Entities.
3. Head officials of all Provincial Treasuries.

It does not seem to be addressed to Accounting Officers of all Provincial Departments as well. I just thought I must just highlight that I am sure what it may or may not mean that it seems to be addressed to those people. It might not necessarily mean that a Head of Department
20 in a Province would not be aware of it necessarily. It is just the fact of it being addressed to certain people that I am mentioning.

ADV LEAH GCABASHE SC: Chairman substantively instruction notes form part of what becomes law because they are provided for in the PFMA. So they really become law of general application. It is just that it is a break as I have understood it they are breaking it down to be

able to assist those who are applying those instruction notes or regulations. So it is on that...

CHAIRPERSON: You know I understand...

ADV LEAH GCABASHE SC: So it is on that premise.

CHAIRPERSON: I understand that but I am – I am just raising it simply because there was a question about whether he would have been aware of it or was aware of it and he did give an answer – the answer that he gave. But at that stage I had not picked up that for some reason in – in indicating to whom it was addressed the National Treasury seems not to
10 have included Heads of Provincial Departments. That is [Chair not speaking into microphone] saying what anyone makes of it is another matter.

ADV LEAH GCABASHE SC: I do not know if you want me to read the provision in the PFMA that deals with these?

CHAIRPERSON: No you do not need to.

ADV LEAH GCABASHE SC: To reassure you.

CHAIRPERSON: It is a factual thing ja.

ADV LEAH GCABASHE SC: Thank you Chairman.

CHAIRPERSON: It is a factual matter of it is addressed to certain
20 specific people that might not necessarily mean that there was no obligation on those who were not mentioned to make themselves aware of it but I just wanted to make mention that I have just become aware that Head of Provisional Departments are not mentioned.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Thabethe I would have preferred to go and now deal specifically with Mahuma

Mobung leading into Vrede but I think we will do that in the morning because you have explained it so well at one level in your 2018 affidavit. So can I park that particular – you know I have structured all my questions so I am going to park that aspect and ask you about Paras. Now in your 10 August affidavit it is the one – the last affidavit in the bundle. I will just take you to it.

CHAIRPERSON: Remember to identify which bundle you are talking about.

ADV LEAH GCABASHE SC: It is Exhibit HH10 which contains your
10 affidavits. At paragraph 5 thereof – it is page 237 of what we call the witness bundle. 237 it is literally towards the back – right to the back.

CHAIRPERSON: Just one second.

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. As I understand what is written here it is a...

CHAIRPERSON: And on what page are you now?

ADV LEAH GCABASHE SC: I am on page 237 Chairman. 237.

CHAIRPERSON: 237. Thank you.

20 **ADV LEAH GCABASHE SC**: Are you there Mr Thabethe?

MR MBANA PETER THABETHE: Yes I am.

ADV LEAH GCABASHE SC: As I understand what is written here certainly paragraph 5 going into paragraph 6 and 7 it is really part of the justification for going to seek Paras as a partner, am I correct? You speak of the Free State not having processing facilities available to

add value to the milk produced locally.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: You speak of the fact that the milk was being transported to various centres in Gauteng from the Free State for processing.

ADV LEAH GCABASHE SC: That is correct.

CHAIRPERSON: I am sorry Ms Gcabashe I just pick up something here that I wanted to raise earlier. You see that affidavit refers to annexures but those annexures are not in the same bundle and I do not know if
10 they are in any other bundle. So as you read them you are referred to an annexure but you do not know where to find it.

ADV LEAH GCABASHE SC: Chairman we received it. We received it like this from the legal representatives of Mr Thabethe and I think part of the difficulty they have had is in locating documents that were seized, legally seized. So he really does not as I have understood things he does not have some of these records.

CHAIRPERSON: Well I did understand from his affidavit that he did not have access to certain documents but that did not help me where – when I was reading this. Because it says see annexure so and so and
20 there is no annexure so and so. And it may be that that annexure helps you understand better what he is saying in his affidavit.

ADV LEAH GCABASHE SC: So...

CHAIRPERSON: So I do not know whether they did – his lawyers did get a chance to try and obtain the annexures from whoever seized them and met with difficulties or whether some attempts can be made can be

made to get them. Because otherwise you do not get the full meaning of what he is saying because you do not have the annexures. I think Mr Fourie maybe wishing to say something. Maybe he might be able to throw some light.

MR HERMAN FOURIE: Chair thank you. You would note from the affidavit for Mr Thabethe this specific affidavit is the affidavit that was annexed in the founding affidavit that was served in the Poker Application. Now the – I think it was SJS5 as an annexure to that affidavit and that was an affidavit that was gathered from Mr Thabethe
10 during the investigation if I am not mistaken by the – during the ENS Report stadium of matters. Now Mr Thabethe has indicated the original of the affidavit that was signed by him was obviously handed in and the copy that he had of his full affidavit was confiscated during the search and seizure of the Hawks at that stage. So the only part of the affidavit that he had in his possession was the one that was provided for – or provided to him in the founding affidavit. He had no other options and you will note in the founding affidavit the annexure that was annexed thereto there is also several parts of the annexure that are missing with reference then again to the affidavit of Mr Thabethe in his opposition of
20 the founding affidavit in the Poker Application. He also makes mention of that and you will gather that they have omitted certain parts but that is a discussion – a hurdle for them to overcome should they institute again. But that is the problem that he has had in providing all the relevant documentation as well as in his preparation because they have confiscated the relevant documentation and the only thing that he has

with regards to this affidavit is unfortunately the documentation that they have annexed to their founding papers.

CHAIRPERSON: No that part I understand that he gave us only what he could get – what he has. What I am trying to find out is whether attempts were made to say to whoever had seized those documents to say we are going to the commission and want to be helpful to the commission but we do not – we need these documents can you provide them and then maybe they refused and whether also the commission's legal team has had any chance to do that? They might not have had
10 because of the short time that they might have had after receiving the document – the documents. So that – that is the part I am concentrating on to see whether we can look at attempts being made to contact those who should be having those documents and those annexures because if they may – if they agree then we can – we can get them that is what I am talking about.

MR HERMAN FOURIE: Chair I think that would be most helpful.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: From our side we have attempted.

CHAIRPERSON: Yes.

20 **MR HERMAN FOURIE**: At every stage in the proceedings.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: To obtain but if the commission would at all assist in that I think it would be beneficial.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: Not only in this forum but in other forums

proceeding.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: If we could get a copy.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: We have not been successful with even a response.

CHAIRPERSON: Yes.

MR HERMAN FOURIE: But if the commission would be able to assist I think that would help greatly.

10 **CHAIRPERSON**: Okay no thank you. I think the legal team should talk to whoever to see if we can get the annexures and whatever other documents would enable me to have a full and complete picture of what Mr Thabethe is con – seeking to convey. I would image that there would be cooperation from various urgencies.

ADV LEAH GCABASHE SC: Chairman we will certainly endeavour to do that.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: I – I must point out though that few of these annexures are in the court bundle.

20 **CHAIRPERSON**: Ja.

ADV LEAH GCABASHE SC: So for instance the beneficiary list you have seen that before.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: It is definitely in one of the bundles.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: I know it is in the court bundle.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: I think we have a couple of duplicates on that.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: We – the bilateral agreement on agriculture which is MPT3 we have a copy of that as well.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: In the court bundle.

10 **CHAIRPERSON:** Hm.

ADV LEAH GCABASHE SC: Then there is the request to go to India.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: MPT4 that too is in the bundles.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Because these papers were next to ...

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: The other court application.

20 **CHAIRPERSON:** Those that we got somewhere then simply copies must be made and they get attached here and given the – the – be marked MPT whatever you know as indicated in the affidavit. They get added in the back of the – of this then one can – can get assistance. Those that we do not have then attempts could be made to – should be made to try and get them.

ADV LEAH GCABASHE SC: We will do that Chairman under your instruction. Nobody will accuse us of fiddling with what was presented

to the commission by the witness.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: But I...

CHAIRPERSON: Yes I mean the – the – the – I mean if for purposes of technicalities one needs to not put it as annexures – put them as annexures to the affidavit because when he submitted it they were not annexures. One can put a divider after the affidavit but have exactly the same documents marked according to that so that one then just goes there. Because with regard to some annexures one can do
10 without but in some cases you want to see the annexure that is referred to.

ADV LEAH GCABASHE SC: Yes Chairman.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABASHE SC: So when we – we come back Mr Thabethe to your trip it is really first Paras. The essential question is how did you locate this particular company as a possible strategic partner in the dairy enterprise that you were planning to establish? Where did you hear about Paras from?

MR MBANA PETER THABETHE: Chair I had done a research to look at
20 countries that are doing very well in milk production and the actual four countries came out which we have looked at. The countries that we closely looked at was Switzerland, very strong in dairy. We looked at Germany and we looked at India and we then compared the systems and models that they use for dairy production and processing. The model that we felt came very close to what we were doing was the

model in India which was done by Paras.

ADV LEAH GCABASHE SC: Can I – can I interrupt you otherwise the matters I would want to tease out with you – but please do not forget where you were going to go to, the rest of what you were going to say. So if we bring it back first. You speak of this research that was conducted by whom?

MR MBANA PETER THABETHE: Well I did the desktop research.

ADV LEAH GCABASHE SC: You personally Mr Thabethe?

MR MBANA PETER THABETHE: I personally did the desktop. Some of
10 it I had already looked at when I was still at the National Department of
Agriculture. Some of them I found them having been done by the – by
the Free State Provincial Department.

ADV LEAH GCABASHE SC: Again can I pause to understand the interest in dairy both at national department level and at provincial level. You are saying that there was an interest therefore research had been done, is this what you are saying?

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: At national office?

MR MBANA PETER THABETHE: The...

20 **CHAIRPERSON:** I am sorry, I am sorry. In regard to milk production this interest that was there when you were at National – at the national department and that was there when you were the provincial department it was the same interest namely on milk production?

MR MBANA PETER THABETHE: Yes but the one at the provincial department had already been there before I came in. There was

research that was done before but the research that was done by the Department was done together with Germany.

CHAIRPERSON: The National Department?

MR MBANA PETER THABETHE: The Provincial Department.

CHAIRPERSON: Provincial Department.

MR MBANA PETER THABETHE: Yes. There was a – I would call it an initiative without the document that – in front of me now but there was a comprehensive study that was done funded by the Department together with Germany that was developed and looked at.

10 **CHAIRPERSON**: Paras.

MR MBANA PETER THABETHE: Thank - thank you Chair. The - the reason why we chose Paras it was the type of model they have been using. Paras - what made us to have interest is that they have been collecting milk from small producers. Somebody having five dairy cattle, two dairy cattle. They will then milk and then Paras will send a tanker to collect the milk from these small producers, bring it into their facility for processing and - and also for - for whatever product that they - they were making there.

20 Now that model is the one that we envisaged given the situation that we wanted to develop smallholder farmers with smaller dairies which when we looked at the research in South Africa they were closing down because of the cost implication and the model of Paras is that they have been encouraging them. In our case they have been closing down.

So we wanted to use that system so that we encourage them.

The milk gets collected, brought into the processing facility and - and they can be given an opportunity to grow. Now that is the model that led us to Paras versus the other models.

ADV LEAH GCABASHE SC: Now ...

CHAIRPERSON: I - I am sorry Ms Gcabashe. This - maybe this question would belong more appropriately to tomorrow when we have had a look at your affidavit but I think I would like to put it now because then I will follow your answers to various questions much better. Can you articulate what the problem was or what the problems were for
10 which you thought a dairy farm was the solution for the Free State?

You have told me about small dairy producers who were closing down but I just want to hear the full story. This is what was concerning me or concerning the Department of Agriculture and we saw the dairy farm - the idea of a dairy farm as being a solution to these problems. This is what we wanted to fix because when you talk about your choice of Paras I want to link - to see if it links with what you sought to - to address.

MR MBANA PETER THABETHE: Thank you. Thank you Chair. As - as I indicated one was that the small suppliers were closing down.
20 Secondly in the Free State there was no processing facility for the milk that had produced in the - which might mean that job opportunities of the produce that were - were produced in the Free State would be created somewhere else and - and the milk come down for marketing.

That - that was the one problem. Secondly the Black smallholder farmers had not fully entered in the industry of dairy

production. We wanted to bring them on board. The majority of them had participated in beef production but not really in the dairy industry. So we wanted to bring them on board. Those become the problem so that we do not decline the production of milk. We increase it. Hence we looked at the different model.

CHAIRPERSON: Okay. Let us just get that right. You wanted to address the question of small milk producers in the Free State closing down?

MR MBANA PETER THABETHE: That is correct Chair.

10 **CHAIRPERSON:** You wanted to get Black farmers on board onto dairy farming?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Is that right? Is there a third one or those were the - the issues that you sought to address by way of this dairy farm?

MR MBANA PETER THABETHE: Yes. The - the third one was to bring into the Free State a processing facility - value adding.

CHAIRPERSON: Yes. Okay, alright. Thank you.

ADV LEAH GCABASHE SC: The - a number of - of issues that arise from your answer to the Chairman and I think I would like to explore
20 those with you tomorrow when we talk about the research you conducted in relation to your choice of location for the dairy farm. So if you have access to David Maree's transcript. It is on our website. It would be useful for you maybe to have a look at that overnight because he challenges a lot of the assumptions that were made in relation to where dairy farms are most productive but I would like to deal with that

tomorrow.

I really would like at this - with your leave Chairman - at this point in time to focus on Paras and focus on Paras and India for a couple of reasons. In the examples you were giving now the first thing that came to mind again that you will find in David Maree's evidence is one, Paras was not the largest milk producer. Two, the area where Paras was collecting milk for processing relied largely more than on dairy farm - dairy milk.

They relied on buffalo milk. So I would like you to apply your
10 mind to that and to tell the Chairman whether you took that factor into consideration that in the area that Paras collects milk from I think it was about 57 percent of the milk they collect is from buffaloes. Now it is not we - we do here. We have a different type of buffalo in any event.

Those are water buffalo. They are not similar to ours. So much as that is milk that can be used. In this country we do not have that. So you go to a producer whose not entirely on for with what you really want. So my focus is Paras.

MR MBANA PETER THABETHE: *Ja.* Thank - thank you Chair. I - I do
20 not agree with the evidence that there is a difference in collecting milk from buffaloes and cattle because in India the smallholders are keeping buffaloes for milk production. The only difference is that this is a buffalo and this is a cow but the quantities and volumes and the - and the model is the same whether you want it from a buffalo or you want it from a cow.

What we have been looking it is that the system that they have been using in our case is going to be cattle. In their case in the majority it was buffaloes.

(Background noise)

CHAIRPERSON: I am sorry. I am not sure what is happening.

ADV LEAH GCABASHE SC: No there is still

CHAIRPERSON: Shall we take a short adjournment?

Unknown person: Yes.

CHAIRPERSON: Okay. We will take a short adjournment.

10 **REGISTRAR**: All rise.

HEARING ADJOURNS

HEARING RESUMES

(Note from technician: please note there are a few minutes of recording missing at the start of this session. The computer program just froze. We have lost that part.)

ADV LEAH GCABASHE SC: Thabethe the simple point as I understand it that Mr Maree was making was you are not comparing apples with apples, number one. Number two, they are not the largest milk producer in India. Then there are other issues in relation to our local
20 that he dealt with.

CHAIRPERSON: In India or in the world?

ADV LEAH GCABASHE SC: Hm.

CHAIRPERSON: You said in India. You said they are not the largest in India.

ADV LEAH GCABASHE SC: No they are not the largest in India.

CHAIRPERSON: Oh, okay.

ADV LEAH GCABASHE SC: In India Chairman.

CHAIRPERSON: Oh in India as well. I thought in the ...

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: They are not the largest in the world.

ADV LEAH GCABASHE SC: No, no.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Not in India.

CHAIRPERSON: Okay.

- 10 **ADV LEAH GCABASHE SC:** Yes; but be that as it may what I have understood from your August affidavit and you will find this at page 238 of the witness bundle. You say that you had already identified the company by the name of Paras Dairy upon where the research was going to be conducted. I am quoting you.

“Paras were identified through the aid of internet assistance. I then officiated the meeting following the protocol through the Office of the Premier in the Free State.”

- 20 And you were elaborating on this desktop research when we last spoke about Paras. You - could you continue because I really cannot imagine that a Department of Agriculture or a Department of Agriculture and Rural Development would be relying on a desktop/Google whatever it might have been source for taking a decision to spend large sums of money on this dairy farm in South Africa.

So all I want you to do is to help us understand how you stumbled across Paras. What convinced you that they were the ideal partner?

MR MBANA PETER THABETHE: Thank - thank you Chair. I - I thought I had answered ...

ADV LEAH GCABASHE SC: No.

MR MBANA PETER THABETHE: That I have done a desktop research across to check the trends of milk production. Out of which I have also indicated that I do not agree with some of the statements mentioned in
10 the report of Mr Maree. Like one, where he says India is not the highest milk producer in the world. There you talk about milk production.

Anyone can Google and check who is the highest milk producer in the world is India. He then classifies it further and says it is not the higher milk producer of cattle milk. Then I agree. Then that makes a difference but milk production they are the highest but not the highest in cattle milk production. Then if - if he does that distinction I agree with him but then after I have - I have identified and I have looked at the system of Paras.

20 It was only then that I requested permission to go and visit India. So that what I have read is confirmed or not. They do not do the way I have seen it. So it might not be applicable in - in South Africa.

CHAIRPERSON: What were - what were the features of Paras' model of milk production that attracted you to Paras?

MR MBANA PETER THABETHE: The - the main feature was the

collection of milk from small producers. That was what key for me and also the success in doing processing of milk that was collected from small producers. They have been doing very well in collecting and processing that. That - that would have been an ideal system for us if we would agree that it is a success.

CHAIRPERSON: So is what you are telling me that the key factors that attracted you to identifying Paras was the fact that they collected milk from small farmers and why was that attractive to you?

MR MBANA PETER THABETHE: Thank you Chair. As - as I also
10 indicated that it was going to assist us to resolve our problem which we had in the Free State of the small dairies closing down. Now if you have got a country that is collecting from those small producers keeping them active we wanted to look at that model. So that we will deal with the problem because it was either you upscale the small ones or they close down.

That system was very attractive to say if they can do it in India why can we not borrow the same model and do it in support of the small producers.

CHAIRPERSON: But you do not complete the picture that I am trying
20 to get from you. How did you see that helping with what you wanted to achieve in the Free State? How did you see that helping there?

MR MBANA PETER THABETHE: Yes. The - the way saw it was that if - if we establish a dairy in the Free State that will have the capacity to collect the milk we would then be able also to establish even more smaller ones to do the collection and bringing it for processing.

CHAIRPERSON: At that time as I understand the position either from you or from previous witnesses the numbers of dairy farmers in the Free State was going down significantly. Is that right?

MR MBANA PETER THABETHE: That is correct.

CHAIRPERSON: So what you wanted was to establish a dairy farm which would do what Paras - what you understood Paras to be doing namely sell milk. Not only milk that is produced on a farm but go to small farmers and collect milk from them and what - and by it from them and sell it or what? What - what did you envisage?

10 **MR MBANA PETER THABETHE:** Yes. The - the thinking was that we do not only collect and buy from them but we make those farmers also part of the - to participate in the value addition of that milk.

CHAIRPERSON: Yes but what you said what was key that attracted you to Paras was the fact that Paras was collecting milk from the small farmers?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: *Ja.* Now applying that if you were going to do - wanted to do that in the Free State what did you envisage? Did you envisage that you would do what Paras was doing namely go and
20 collect the milk from - from the small farmers and do what with it?

MR MBANA PETER THABETHE: No. What we - what we looked at there was that they had the facility what - what assisted them to be able to collect the milk because they had the facility. When they collect the milk they will bring it to the facility for - for processing. So the - the situation also then said to us you also need to have a facility to

process the milk because collecting it and you do not have a facility at close proximity it means you will collect it still and send it somewhere for processing.

So you needed to have a facility whereby when you collect the milk in addition to what you are producing in that facility. Then you are able to increase the volumes of processing and provide support to the small farmers.

CHAIRPERSON: You - you talk about collecting the milk. Did that mean you would buy the milk from the small farmers and then use it for whatever purpose or did that mean that you would not buy it? You
10 would collect it and when you have sold it give the money to these farmers. Exactly what - what did you envisage?

MR MBANA PETER THABETHE: *Ja.* Chair - Chair if Chair allows me is then to explain the Vrede Dairy Model. Then it will - it will clarify what would then happen.

CHAIRPERSON: I - I will allow you to do that but maybe later. If you could just clarify this part for me and then later on you could come back to it. So that she can continue on her line of - of questioning.

MR MBANA PETER THABETHE: Yes. That is correct Chair. You will
20 buy the milk from them.

CHAIRPERSON: Okay, okay and then ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: And then use it in whatever way you wanted to use it for - for the farm?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: So Mr Thabethe I am looking at an annexure here to Mr Maree's statement. It is annexure that sets out the 20 major dairy companies and the date itself is relevant for 2012 - 2012/2013 and this data ranks a company in New Zealand as having the highest dairy turnover in US\$16.4 billion. So you have New Zealand.

Then you have got the USA at number two, France number three, Switzerland - that you looked at - number four, USA number five, Denmark/Sweden number six, Netherlands number seven, France eight, 10 USA nine, Germany 10, Canada/USA 11, Ireland 12, USA takes 13 and 14 spots. Germany - a different company in Germany, France, China then India comes in at spot 18 and their dairy turnover for that particular company was 2.5 billion.

So if you compare that 2.5 billion just by way of example with France which sits at US\$15.6 billion with New Zealand which sits at 16.4 billion. I remain concerned about the quality of the desktop research you conducted. Particularly where - when the National Treasury investigators asked you for a copy of these documents you had relied on - your desktop presentation.

20 You were not able to produce those. Should I be concerned about the quality of the desktop research you say you conducted?

MR MBANA PETER THABETHE: Thank you Chair. I - I do not dispute the report of Mr Maree. The commercial ventures that they are doing there would be different from what we wanted to do. There they are doing large dairies, big turnovers, doing agroprocessing. Our situation

was we would not get to that level of their production. We wanted to assist smallholders and those models would not be applicable to us.

That - that is where I do not agree because he is comparing very hi-tech first world dairy production level. With the one that we wanted to do we had compared ourselves to a country similar to us having the same kind of challenges, the same scale of farmers. That is what we looked at and said that model will be applicable to us. In terms of commercial value they are doing very well but we - we will not be able to apply those models.

- 10 **ADV LEAH GCABASHE SC:** You know Mr Thabethe I would understand your answer more clearly if you were saying to the Chairman because of the nature of what we wanted to do in South Africa we wanted to encourage Black farmers to move from red meat - from cattle farming - to dairy farming. We then started off with this group of 10 farmers - local African farmers and ask them to do A, B, C, D and E.

- 20 My difficulty arises when I look at what you spent on a facility that as we will explore between today and tomorrow never worked in the manner that you intended to for a variety of reasons. So if you were going to start small because we are all developing countries you do that. You tried to build a state of the art milk processing plant there. We will deal with that problem tomorrow.

MR MBANA PETER THABETHE: *Ja.* Thank - thank you Chair. We would not go that route because starting dairies and leave them at that level will then collapse again because we had that experience of small dairies closing down. So for us to start small dairies and leave them

without properly setting up structures that will assist them not to collapse it would not help us.

CHAIRPERSON: No I do not think Ms Gcabashe is talking about that. I think she is talking about you starting small but with the aim of getting bigger. Not starting small and leaving it there.

ADV LEAH GCABASHE SC: In any event Mr Thabethe ...

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: My understanding is that there was a milk processing plant in Harrismith. It continues to be there in Harrismith.

10 **MR MBANA PETER THABETHE:** Yes.

ADV LEAH GCABASHE SC: There was a milk processing plant in Frankfurt which is further north. I think about 60 kilometres from Vrede.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: There was a milk processing plant in Standerton which closed down.

MR MBANA PETER THABETHE: Hm.

ADV LEAH GCABASHE SC: So the premise that there are no milk processing plants in the vicinity of Vrede where you set up this dairy
20 farm is not correct. Hence my example of saying if you had started small your 100 farmers you deal with them in terms of the cattle you wanted to give them - the dairy cows you wanted to give them and use Harrismith - as a quick example - where you then transport your milk.

I might have understood what you are talking about. It would not have cost you more or less 250 million over a two year period.

CHAIRPERSON: But may - maybe - let us get the factual situation to be common cause if it is common cause. Do you agree that there are those milk processing plants in the places in the Free State that she has mentioned?

MR MBANA PETER THABETHE: Chair I - I agree that there is a - a private processing plant in both those places Frankfurt and Harrismith.

CHAIRPERSON: Yes. She then says in the light of that it was - it is not correct - it was not correct for you to say there was no milk processing plant I do not know whether it be Free State or in - or in the
10 vicinity.

ADV LEAH GCABASHE SC: Both ...

CHAIRPERSON: What do you say to that or both? What do you say to that?

ADV LEAH GCABASHE SC: Both towns are in the Free State.

CHAIRPERSON: *Ja.*

ADV LEAH GCABASHE SC: Chairman.

CHAIRPERSON: She is suggesting to you that that was not correct. What do you say to that?

MR MBANA PETER THABETHE: *Ja.* Chair - Chair I - I agree if - if she
20 says there - there were processing plant but they were not in a position to assist our challenge.

CHAIRPERSON: But did you say earlier on in your evidence that it was because there were no milk processing plants that you wanted to establish a milk processing plant through the farm as well? Was that your evidence earlier?

MR MBANA PETER THABETHE: Yes, yes Chair.

CHAIRPERSON: Yes. So you ...

MR MBANA PETER THABETHE: Hm.

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: Okay. Let - let me go back again and try and explain it.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The - the existing processing plant in - in terms of capacity you would go in there and sign a contract with
10 them and then as a farmer you would then be able to provide the milk. So they will come to you, test your milk, agree with you whether they will be able to take your milk or not. So a very limited number of existing farmers were able to utilise those because they were not very big.

Hence the trucks that were still collecting milk in the Free State to Johannesburg were still more than those that were supplying the - the factories that were in the Free State. So the problem was not resolved by them.

CHAIRPERSON: But we just need to get - to be common cause what is
20 common cause what - what you do not dispute. So you had said earlier on that part of the reason why you went to Paras or you identified Paras was because you wanted to have a milk processing plant established in - in - on the - in Vrede - in Vrede Farm ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Because there was no milk processing plant in the

Free State or in the vicinity of Vrede. So you now accept that no actually there were at least two milk processing plants?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: So that part was not correct. So she is right about that?

MR MBANA PETER THABETHE: No. She is correct.

CHAIRPERSON: Yes. Okay. I think Ms Gcabashe you can take it from there then.

ADV LEAH GCABASHE SC: Thank you Chair; but as I said I - I had
10 wanted to focus on Paras. You then travelled to India. You sought permission from the Premier - you say in your affidavit - and in fact you say at page 12 of the witness bundle paragraph 37.1 you write as follows. You say:

“My visit to Paras India was approved by Exco pursuant to which Mr Ashok Narayan was delegated by the Office of the Premier to accompany me to India in his capacity as advisor to the Premier.”

It is page 12 - paginated page 12 - paragraph 37.1. I have your travel itinerary here. I want to start there.

20 **MR MBANA PETER THABETHE:** Thank you.

ADV LEAH GCABASHE SC: It is EXHIBIT HH. Reference Bundle D for Dolly Chairman. D for Donald and the page number is 1-3-2-3 - 13-23. You will agree - sorry Mr Thabethe. 1-3-2-3. There is in big bold black letters number 6-6-9 from the old court papers. That is the one. That is the page we are on but that is not our reference at all. Our

reference is 1-3-2-3.

So this is your motivation to the Premier. First question why would you be writing to the Premier and not to the MEC? I really do not know. This is addressed to the Premier, Mr Magashule from yourself.

MR MBANA PETER THABETHE: Yes Chair. The approval for overseas trips has not been delegated to the MEC. So the approval gets submitted to the Premier for approval.

ADV LEAH GCABASHE SC: By all Heads of Department?

MR MBANA PETER THABETHE: By all Heads of Department. By all
10 persons in the Provincial Government who wants to travel overseas. You get approval from the Premier.

ADV LEAH GCABASHE SC: Was that the case with all other Premiers that you have worked under not just in the Free State but elsewhere?

MR MBANA PETER THABETHE: Yes. When - I have - I have worked in Mpumalanga that was the case. In National the Minister was approving.

ADV LEAH GCABASHE SC: Now the second point is ...

CHAIRPERSON: Well maybe before the second point Ms Gcabashe; but even if the authority to grant approval was the Premier would you
20 not write to the MEC - the person you report to and if he or if he approved then he would be the one to write to the Premier to say I am asking that you allow my Head of Department to travel for the reasons that the gives in his memorandum which I attached - I attach hereto. Something along those lines. Would you write directly to the Premier?

MR MBANA PETER THABETHE: Yes Chair. In fact there is a template

on - on which you - you write the submission.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: So you address it ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: To the Premier.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: The MEC recommends ...

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: For the Premier's approval.

10 **CHAIRPERSON**: Okay. I - in any event you - you get appointed by the Premier as a Head of Department?

MR MBANA PETER THABETHE: (Indistinct) yes.

CHAIRPERSON: Is that right?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: So under purpose in paragraph 1 you say - you:

20 "The purpose is to request approval from the Honourable Premier to allow HOD for Agriculture Mr P M Thabethe and advisor to the Premier Mr Ashok Narayana to undertake a trip to visit a dairy farm."

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Not a buffalo farm.

"...and attend a meeting with a strategic partner in

India from 29 February to 4 March 2012 in support
of the expansion of dairy farming in the Free State.”

Mr Ashok Narayana who is he?

MR MBANA PETER THABETHE: Ja. Chair can I start by saying a
dairy farm is irrespective whether you are milking cattle, buffalo, goats.
It can be any. It remains a dairy farm. So it - it does not only specify
to cattle.

ADV LEAH GCABASHE SC: I - I know that in Botswana what is taken
of is donkey milk. I will not call that a dairy farm. Chairman it is a
10 proposition I put. He is the agriculturist. I happen to know that it is
very popular in Botswana.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Donkey milk. I will not - people use it and
drink it ...

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: As they would dairy - cow milk. You
cannot classify that as a dairy farm Mr Thabethe.

MR MBANA PETER THABETHE: It is Chair. We also have got a goat
diary. We also call it a dairy farm but you only milk goats.

20 **ADV LEAH GCABASHE SC:** Anyway ...

CHAIRPERSON: So - so the dairy part relates to the milk?

MR MBANA PETER THABETHE: To the milk.

CHAIRPERSON: Not to where you get the milk from?

MR MBANA PETER THABETHE: Not - yes Chair.

CHAIRPERSON: As long as it is - it is a farm for milk?

MR MBANA PETER THABETHE: For milk.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: You were explaining who Mr Ashok Narayana is and I really want it in relation to you. Who - who is he? Where - where did he come from? Why did he accompany you to India?

MR MBANA PETER THABETHE: Chair I - I think it is - it is - the - the submissions that I - I sent clarifies who is he.

ADV LEAH GCABASHE SC: Please clarify that to the Chair.

MR MBANA PETER THABETHE: Mr Narayana was an advisor to the
10 Premier, which then accompanied me to the trip to India.

ADV LEAH GCABASHE SC: Why Mr Narayana, is he a dairy farmer, does he have expertise in dairy farming? That's really what the question is, why this particular individual?

CHAIRPERSON: Ja, why was he chosen as the right person to go with you to India, to accompany you to India on this project, on this visit?

MR MBANA PETER THABETHE: I cannot answer Chair the question, the person ...[intervenes]

CHAIRPERSON: Oh you did not decide that yourself?

MR MBANA PETER THABETHE: No.

20 **CHAIRPERSON:** So who decided that?

MR MBANA PETER THABETHE: When I did the submission the Embassy indicated to me that I will be accompanied by Mr Ashok Narayana.

ADV LEAH GCABASHE SC: Which MEC?

MR MBANA PETER THABETHE: The Embassy for Agriculture and

Rural Development, at that time who signed the submissions
...[intervenes]

CHAIRPERSON: Mr Zwane.

MR MBANA PETER THABETHE: Mr Zwane.

ADV LEAH GCABASHE SC: So you were instructed to travel with Mr
Narayana?

MR MBANA PETER THABETHE: Chair it has always been the case if
– the Office of the Premier is responsible for the protocol so in all my
overseas trips that I have taken I have been delegated a person from
10 the office of the Premier. As long as it is an official ...[intervenes]

CHAIRPERSON: To go with you?

MR MBANA PETER THABETHE: To go with you.

CHAIRPERSON: Why?

MR MBANA PETER THABETHE: They were very – because for
protocol purposes somebody has to go with you from the Office of the
Premier, because individual provincial departments did not have a unit
for protocol and a lot of these if you don't understand the protocols of
particular countries then you have problems, so it was their
responsibility to look at the protocols and assist you when you go to
20 those countries.

CHAIRPERSON: But you were not going to a government entity there,
you were going to a private company, so what did protocol have
anything to do with this?

MR MBANA PETER THABETHE: All the time protocol people will
assist you.

CHAIRPERSON: Ja, my question is why, I mean you are not going to a government department there, you are going to a private business to learn how they do certain things, so why – what's the relevance of somebody who must come for protocol purposes?

MR MBANA PETER THABETHE: I don't know Chair. All that we know is that if you make a request to go overseas the office will then be able to allocate you, either in your submission or the person can be added in your submission who can then assist you.

CHAIRPERSON: Even if that person adds no value in the trip or in the
10 purpose of your trip, they will just give somebody.

MR MBANA PETER THABETHE: A person will be allocated to you
Chair ...[intervenes]

CHAIRPERSON: So you don't want to say even if the person was not going to add value. Okay, alright, so are you saying you had no say on the choice of Mr Narayana as the person to accompany you?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Who made the choice, who made the decision, now you told me that Mr Zwane mentioned this name as the person that would go with you, but the person who had the decision was who, was it
20 Mr Zwane or was it the Premier's office?

MR MBANA PETER THABETHE: Yes Mr Zwane indicated to me that in my submission I must include Mr Narayana to travel with me.

CHAIRPERSON: Oh so he said you must include that in your submission to say you want him to go with you.

MR MBANA PETER THABETHE: Yes to go with yes.

CHAIRPERSON: Okay, okay.

ADV LEAH GCABASHE SC: Now I can find the record in our files, Mr Narayana was appointed to the advisory council of the Premier in February 2012, would you know about that?

MR MBANA PETER THABETHE: No I wouldn't know Chair.

ADV LEAH GCABASHE SC: But does it make sense to you where somebody has literally just arrived a month ago in the Premier's office, not even in the Premier's office, he is part of the advisory council which is an *ad hoc* council, that somebody who has just arrived at
10 Advisory Council level is the person who is now your protocol officer, would that not be strange to you?

MR MBANA PETER THABETHE: I wouldn't comment Chair because I don't know what were the reasons they used for the choice.

CHAIRPERSON: Did you know Mr Narayana at the time that Mr Zwane suggested his name as the person that you must include in your submission? Did you know him at that time?

MR MBANA PETER THABETHE: Not at close proximity but I had seen him in other meetings.

CHAIRPERSON: Oh okay.

20 **MR MBANA PETER THABETHE:** Where I never had any interactions with him.

CHAIRPERSON: You had not had an interaction with him?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: You didn't know what his expectations was, you didn't know anything really about him, is that right?

MR MBANA PETER THABETHE: Yes all I know is that there were people who had been advisors to the Premier who would attend some meetings.

CHAIRPERSON: Yes, okay.

ADV LEAH GCABASHE SC: So we – I can give you the reference now Chairman it's page 1316 ...[intervenes]

CHAIRPERSON: Of the same bundle?

ADV LEAH GCABASHE SC: Reference HH, reference bundle D, same bundle Chairman, D, 1316.

10 **CHAIRPERSON:** 1316?

ADV LEAH GCABASHE SC: That's correct Chairman. There you simply have a letter of appointment.

CHAIRPERSON: Okay let me just see. Oh that's the letter of appointment of Mr Narayana by Mr Magashule the Premier.

ADV LEAH GCABASHE SC: That's correct Chairman.

CHAIRPERSON: And the date is 29 February 2012.

ADV LEAH GCABASHE SC: Correct Chairman.

20 **CHAIRPERSON:** And the date of the submission, of the request for permission that was submitted to the Premier by Mr Thabethe is 20 – it was signed by Mr Thabethe on 24 February 2012, so before – so it was, so Mr Zwane must have asked you to include Narayana even before his appointment to the Advisory Council because the letter appointing Mr Narayana to the Advisory Council of the Premier is dated 29 Feb 2012 and your submission was made before that, at least you prepared it on the – you signed it on the 24th of February 2012 and there is no date

for when Mr Zwane signed it.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: And the the date when the Premier signed it to approve was 28th Feb 2012, one day before Mr Narayana was actually appointed.

ADV LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: So when the Premier signed this document Mr Narayana was not a member of his Advisory Council.

10 **CHAIRPERSON:** And maybe you were going to address to say this but I see that the second last paragraph on the end of the letter says that the appointment was to be with effect from the 1st of March 2012

ADV LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: So when the Premier approved that Mr Narayana must accompany Mr Thabethe Mr Narayana had not yet been appointed to the Premier's Advisory Council.

ADV LEAH GCABASHE SC: That's correct Chairman.

CHAIRPERSON: Mmm.

ADV LEAH GCABASHE SC: And the very last sentence also explains
20 the status and function of Mr Narayana, the Premier writes and I quote:

“I look forward to working with you in your capacity as an ICT and Project Management expert on my Advisory Council.”

So he was not a dairy or agriculturalist, he is not a dairy farmer as I asked earlier, it's not an agricultural specialist, he is an ICT Chair. Tell me Mr Thabethe at your level in government are you not able to

interrogate who accompanies you on a specialist mission because you were going out there with the purpose, at your level are you not able to interrogate who accompanies you to places?

MR MBANA PETER THABETHE: Chair you can recommend in your delegation, in your delegation that I would propose then I will then decide who the people that I would want to accompany, but those, that added in your list you have no control over.

ADV LEAH GCABASHE SC: But who else was on your list, now that you mention lists Mr Thabethe?

10 **MR MBANA PETER THABETHE:** Chair in this trip I had asked for myself.

ADV LEAH GCABASHE SC: You were going alone?

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Is that usual?

MR MBANA PETER THABETHE: I had undertaken other overseas trips alone to go and look at different issues that pertained the Department. In instances where I needed delegation I will then do so, but in some instances where you want to go and visit and verify you then go alone.

20 **ADV LEAH GCABASHE SC:** Did you not have a support team within your department that you were working with on this particular project?

MR MBANA PETER THABETHE: There were teams in the department, all that I needed was to go there and confirm number one the existence of the company, and what activities do they do and whether they may have interest in assisting us.

ADV LEAH GCABASHE SC: But surely Mr Thabethe that is exactly why we have a High Commission in New Delhi if I'm not wrong it's New Delhi, they are there to support not only organs of state like Provincial Governments but even ordinary business people who travel to those countries, why did you have to get onto a plane and physically go to India? We have a High Commission.

MR MBANA PETER THABETHE: Chair there are certain aspects that you need to verify as an agriculturalist to physically go there so that when you proceed you know what you are dealing with, hence this trip
10 was not a very long trip, it was to go there, verify, talk to the company, engage in discussions and then come back. The intention was not to spend a very long time, just to go and verify.

ADV LEAH GCABASHE SC: Who paid for Mr Narayana's return trip ticket, was it the Provincial Government?

MR MBANA PETER THABETHE: That's correct.

CHAIRPERSON: Was it the Office of the Premier within the Provincial Government or was it your department?

MR MBANA PETER THABETHE: It was my department Chair.

CHAIRPERSON: Well then the question that Ms Gcabashe asked
20 earlier becomes even more important, you have identified the need to go on a trip to India for a certain purpose for your department, As far as you are concerned it is sufficient if you were the only one who went there. You are told now you must have somebody else that must go with you and payment for that person will come from your Department's budget, surely you must ask yourself the question is there a need for

my department to spend money for this person to travel to India and back, what is the value that this person is going to add to what I am going to India for, surely you have to ask that question as an Accounting Officer, as the Accounting Officer of the Department, do you know not agree?

MR MBANA PETER THABETHE: Chair it is not as easy going into asking questions.

CHAIRPERSON: Well it might not be easy but I am very interested in understanding what it is that makes it not easy, because some of the
10 things in our country have gone wrong and people have kept quiet because they say it's not easy. What is it that makes it not easy for you to ask questions?

MR MBANA PETER THABETHE: Ja, Chair I would go back and say the office is responsible for protocol, if you, if the norm is if you go overseas then a protocol person must go with you, that was my understanding and if this is the understanding you would not be able to question because there are instances where even after this trip where I had gone overseas also carried the cost of the protocol person that will assist you in the trip, because you have initiated the trip, they allocate
20 the person to you to be able to travel with you. If in my own thinking there could be a lot of other things that could be the reasons for somebody in the protocol to accompany, but I don't want to do speculations.

CHAIRPERSON: No you don't have to do speculation, but do you agree that as the head of department, as the accounting officer of the

department, if you are going to now, if your department is going to carry costs for this person to travel to India and come back, stay there for a few days and your department is going to pay for those costs there is a duty on you to say if I am asked the question what value is this person adding, what am I going to say, because if you don't have an answer isn't the position that you should say to whoever starting with Mr Zwane who made the suggestion and maybe to the Office of the Premier, say but why must we spend, why must my department spend so much money on somebody flights when really we don't need him, why, I need to understand as an accounting officer how will I justify this, don't you have to say that?

ADV LEAH GCABASHE SC: Chair I didn't do it.

CHAIRPERSON: Ja, you didn't do it but should you not have done it as an Accounting Officer, the Accounting Officer ...[intervenes]

ADV LEAH GCABASHE SC: Mic Chairman.

CHAIRPERSON: I'm sorry, as the Accounting Officer of the Department, as Head of the Department?

MR MBANA PETER THABETHE: Ja Chair in instances where I would have had a problem in paying I would have indicated that I do not have the money.

CHAIRPERSON: So must I take that answer to mean that you did not have a problem with paying – with the Department paying for Mr Narayana's trip to India in circumstances where you yourself could not say what value he was adding to the trip, you didn't have a problem spending taxpayers money on that?

MR MBANA PETER THABETHE: Chair I do not have an answer for that question.

CHAIRPERSON: But can you see that as an Accounting Officer and as Head of Department you should have an answer, because you have been entrusted with a budget, and it is your duty to make sure that that the funds allocated to the Department are used properly and for proper purposes, there should be no cent that is used without justification. Here comes a situation where you are told effectively to pay for somebody's trip for which you don't have any justification for them to
10 take that trip and to be paid from the Department, do you agree that you should have raised that issue?

MR MBANA PETER THABETHE: I agree Chair.

CHAIRPERSON: Mmm, okay.

ADV LEAH GCABASHE SC: Just the last comment on this aspect I underscore the fact Mr Narayana was not an official, he was not a public functionary, he was not an employee of your department, he was not an employee of the Premier's Office and yet you spent government money on a private individual who I am sure could jolly-well have paid for himself if he wanted to go to India. It just does not sound right, Mr
20 Thabethe?

MR MBANA PETER THABETHE: Ja, Chair in the past we maybe also after this trip we did pay for non-government people in my department's specifically farmers. If I were to identify a trip to go overseas and we would like farmers to go and have exposure we would then recommend that those farmers go with the Department at the cost of the

Department. So that has happened before but I am not trying to justify this one, I am saying that paying for other people who are not working for government we have been doing and motivated for it.

ADV LEAH GCABASHE SC: Now Mr Narayana was a director of companies, so he is not a farmer who needs the exposure that you appear to be speaking of when you say you would take somebody from your area of expertise and competence, agriculture, with you on a trip. This is a businessman who is a director of companies, who has his own money.

10 **CHAIRPERSON:** I think he does consider that he is not justifying this one, is that right?

MR MBANA PETER THABETHE: That's correct.

CHAIRPERSON: You accept that here it was not justified?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: You accept that?

MR MBANA PETER THABETHE: Ja, what I say Chair I should have questioned as the Chair was indicating to me.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But I didn't question.

20 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Yes and looking back you accept that you didn't question.

MR MBANA PETER THABETHE: I agree Chair.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Paragraph ...[intervenes]

CHAIRPERSON: Before that, of course Mr Thabethe part of what concerns one with this situation, but we will explore a lot of things is to what extent could there be many other instances where government officials to what extent where there would be many situations where government officials should have questioned how taxpayers money was being spent but did not question with the result that a lot of taxpayers' money was or may have been wasted, but if they had questioned and said no, no but I am not going to be party to this because I don't see
10 the need maybe taxpayers money would have been saved, so those are the issues that come to mind you know, you understand?

MR MBANA PETER THABETHE: I understand Chair.

CHAIRPERSON: Yes okay thank you.

ADV LEAH GCABASHE SC: Mr Thabethe I am still looking at that letter of motivation that you prepared and my understanding of paragraph 2.1 is that it dealt with just conditions of service, costs related to conditions of service, why was paragraph 2.1 which maybe you should read into the record put here as a motivation, paragraph 2.1 ...[intervenes]

20 **CHAIRPERSON:** I'm terribly sorry Ms Gcabashe, I'm terribly sorry, I only realised now that you are moving away from paragraph 1.1 so I just want to ask one question on that paragraph before you proceed to the next one.

ADV LEAH GCABASHE SC: Alright.

CHAIRPERSON: Was Paras at this time when you requested the

Premier for permission to travel to India was Paras already a partner with the Department of Agriculture in the Free State, were they already a strategic partner?

MR MBANA PETER THABETHE: No, not yet Chair.

CHAIRPERSON: Yes. Why then in paragraph 1.1 did you say you wanted to – you were going there in order to attend a meeting with a strategy partner in India?

MR MBANA PETER THABETHE: I think maybe the wording Chair, but the intention was looking for a strategic partner. We visited there
10 because we wanted an A strategic partner and I think we had used the same wording also in the country when we say we met with strategic partners.

CHAIRPERSON: Ja, you see I don't understand that because somebody doesn't just become your partner, business partner, or whatever partner, a certain process precedes that and you are not saying a potential strategy partner, you are saying you are going to meet with a strategic partner. So then I am wondering could it be that already some processes had gone before you prepared this letter and Paras was for all intents and purposes already a strategic partner and –
20 or was the position that they were not, you were going there to explore or to see what they were doing and how they were doing it with a view that if you are satisfied about certain things with them then maybe they could be a strategic partner?

MR MBANA PETER THABETHE: Ja Chair it might be that we are not using the correct word, because locally we normally refer to people who

are in the industry our strategic partners, if I may use an example in the Free State you will have Grain South Africa, when we refer to Grain South Africa we say they are our strategic partner because we are in the same industry. That is why I am saying maybe then we – our choice of words might not be correct.

CHAIRPERSON: Maybe you are right but it may be that Grain South Africa you already have an existing relationship with them, it might not be formal, but maybe you have interactions with them that's why you call them, you might call them strategic partner, but here you talk about
10 an entity that on your version you had not had any interactions with before this, so but I hear what you are saying. Thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. If I might point out that – oh you were actually going to try and just help me understand or help the Chairman understand more importantly the reason that paragraph 2.1 forms part of the motivation for you to go to visit Paras. You may want to read paragraph 2.1 into the record just so that we understand what is written there.

MR MBANA PETER THABETHE: Ja Chair.

ADV LEAH GCABASHE SC: If you could please start by reading it into
20 the record.

MR MBANA PETER THABETHE:

“Provincial Treasury received the final preliminary allocation letter from National Treasury on the 12 December 2011 an amount of R1 million in the 2012/2013 which is 0873 million in 2013/2014 and

873 million in 2014/2015 has been allocated additional to our baseline to carry through cost on improvement in conditions of service.”

CHAIRPERSON: Was that second – was that first figure there intended to be 1 million you have got 1 thousand million rand which I guess would be R1 billion is it not?

MR MBANA PETER THABETHE: Yes it is intended to be R1 million Chair.

CHAIRPERSON: There are three 000 there. Oh ja it is
10 R1 000 000 000.

ADV LEAH GCABASHE SC: You are the author of this motivation Mr Thabethe?

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: You were the author?

MR MBANA PETER THABETHE: Chair I confirm that it is R1 million.

CHAIRPERSON: It was intended to be R1 million but you did not write R1 million.

MR MBANA PETER THABETHE: It was intended to be R1 million.

CHAIRPERSON: You wrote R1 000 000 000.00.

20 **MR MBANA PETER THABETHE**: It is intended to be R1 million Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Can you confirm that you are the author of this document?

MR MBANA PETER THABETHE: Yes I am – I am Chair.

ADV LEAH GCABASHE SC: So when we go to the next figure which

you have written here as .837 million we can safely assume that you are talking about R873 000.00? I do not know this is really a question?

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: What is the million doing there?

CHAIRPERSON: No I am sorry I – well ja it is R873 000.00 so but there is a million there but it – it might be correct technically because it says 0.873 million.

ADV LEAH GCABASHE SC: We are lawyers Chairman so maybe we do not understand numbers. But we take comfort with the fact that you
10 said that is R873 000,00 that is what you recording there?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: Now what has money that has been allocated over a three year period additional to your baseline so as to cover carry through costs on improvement in conditions of service got to do with a trip to Paras in India?

MR MBANA PETER THABETHE: Thank you Chair. If you – if you write a submission for a trip to go overseas you must indicate that you have the money to undertake that trip. That is the reason why we then indicated that yes indeed money is available because you cannot get an
20 approval to go when you do not have budget allocated for that purpose.

CHAIRPERSON: I will let you...

ADV LEAH GCABASHE SC: I will pass Chairman.

CHAIRPERSON: Oh okay.

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: But that paragraph Mr Thabethe does not say we have

got the money for this trip this is where – this is where we – this is where it is parked. It says

“Provincial Treasury received the final preliminary allocation letter from National Treasury on the 12 December 2011.”

On that sentence I do not – we do not know yet that this is about saying this is where we have got money from. And amount of – I will now read R1 million in 2012/2013, R873 000,00 in 2013/2014 and R873 000,00 in 2014/2015 has been allocated additional to your
10 baseline to cover carry through costs on improvement in conditions of service. From what you are saying here it looks like this money that you are talking about relates to the improvement of conditions of services, is that right?

MR MBANA PETER THABETHE: Yes Chair. If I may explain it?

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: In instances where you may not have enough money in the Department then you make a submission to Treasury for additional allocation. That normally happens during the budget adjustment. So in this instance we had then been informed by
20 National Treasury that we have been allocated additional money. Otherwise when – when at face value when they would have looked at the budget they would have told me that you do not have money. You cannot travel. So I had to motivate that even though it has not shown in the budget yet we had already received an additional allocation from Treasury which allows us to continue the expenditure on that allocation.

CHAIRPERSON: But that allocation – additional allocation was for something else not for a trip to India, is it not?

MR MBANA PETER THABETHE: No there – it was part of the condition of service where you then also pay.

CHAIRPERSON: It was for the improvement of conditions of service.

MR MBANA PETER THABETHE: For the Department. It means it is not [indistinct].

CHAIRPERSON: Ja but does that not mean conditions of service of the employees of the Department?

10 **MR MBANA PETER THABETHE:** No – it is – it – that is what they call it. It is conditions of operation of services because it is money that you are given to be able to do your work. Then it is the Department that then classify where you want it to go.

CHAIRPERSON: Hm. So you are given this money on the basis that you can use it for any of your operations?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Is that what you mean – what you saying?

MR MBANA PETER THABETHE: Yes you are given and then...

CHAIRPERSON: Then it is up to you what you use it for.

20 **MR MBANA PETER THABETHE:** To allocate.

CHAIRPERSON: Within the Department.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: But what is this reference to conditions of service? You say it has got nothing to do with conditions of service of the employees of the Department?

MR MBANA PETER THABETHE: No it – the condition of service it means it is money that is allocated to you to do work.

CHAIRPERSON: Any operations within the...

MR MBANA PETER THABETHE: Any operations within the Department.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: It means it improves you to deliver service.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: Yes Chair.

- 10 **ADV LEAH GCABASHE SC:** Then we look at the next paragraph and you link this trip to the SOPA address that is the State of the Province Address and you say that the Department will deliver a dairy parlour and milk processing plant in Vrede Sesotho integrated project and QwaQwa. Those projects are expected to create additional jobs for the people of the Free State. So the intention when you went to Paras was that you were going to create – you were going to build these processing plants in these areas and thereby create jobs for the people of the Free State?

MR MBANA PETER THABETHE: That is correct Chair.

- 20 **ADV LEAH GCABASHE SC:** But you say in paragraph 2.3 ...

CHAIRPERSON: Okay maybe before you go that far Ms Gcabashe. In relation to 2.1 – paragraph 2.1 I got the impression earlier on that what you were saying is at the time you asked the Premier to grant you permission to travel to Paras you actually did not have money sitting in the Department to pay for that trip but there was money that was on its

way by way of this allocation referred to in this paragraph from which you could then take the money to pay for the trip, is that right?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: So I want to ask the question what was so urgent about undertaking this trip before the money came through properly? Why did it have to happen at that time even before this allocation came through properly?

MR MBANA PETER THABETHE: Ja thank you Chair. The money was already there because it was allocated during the adjustment
10 appropriation and we had already received the letter from Provincial Treasury that the money has been allocated. It means it was there.

CHAIRPERSON: It was there where? I got the impression that you were saying it was on its way, the approval has been granted for it to come but it had not yet arrived. That is the impression I got, was I wrong?

MR MBANA PETER THABETHE: Yes the letter of allocation was given already on the 12 December to the Provincial Treasury. That we are – we have given you the money.

CHAIRPERSON: Is that all that is required before you can use the
20 money or is – once you have got the letter the money must go into the Department's account or not?

MR MBANA PETER THABETHE: Ja Chair in the Province normally the money remains with Provincial Treasury.

CHAIRPERSON: Yes okay.

MR MBANA PETER THABETHE: Yes it remains.

CHAIRPERSON: So once you have got the letter you are as good as if the money is sitting in your Department.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Back to paragraph 2.3 where you note that the allocated budget of R17 million for the completion of 3 dairy plans would only be sufficient to cover the initiation phases of the project hence there is a need for a strategic partner to partner the Department for the completion of the projects within the specified period to
10 comprehensively cover the value chain in terms of markets, further inputs and other unintended occurrences. So you are indicating here that there is an allocated budget of R17 million let me pause there.

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: For the completion of three dairy plans. Let me pause again. R17 million for the completion of three dairy plans.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: A plan?

CHAIRPERSON: Yes.

20 **ADV LEAH GCABASHE SC**: A dairy plan.

CHAIRPERSON: Let us talk more about that. What plans are these that are so expensive? What plans are you talking about?

MR MBANA PETER THABETHE: Ja Chair the development of dairy plans is costly. First of all you have to do ...

CHAIRPERSON: Well let us start with what is a dairy plan?

MR MBANA PETER THABETHE: Yes that is what I am trying to cover Chair. You need to do a feasibility study. You need to do an environmental impact assessment. You need to do a fully-fledged business plan. You need to do water allocation because the consumption of water in a dairy is also very high. So you need to do those analysis. You need to do designs for those dairies and in all these you need to get experts to assist you to do them. And then when you have concluded then you will say I have a dairy plan.

CHAIRPERSON: So your dairy plan is a combination of all these
10 plans?

MR MBANA PETER THABETHE: It is a combination of a number of things that need to happen.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: I might have not covered all them.

CHAIRPERSON: Yes but basically what you are talking about is something that is really – I want to say basic but that might convey a wrong meaning but something quite essential.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: In the sense that you want to know whether this
20 project – this dairy project – this dairy milk production business or project that I want to undertake whether it would be sustainable. Whether it will give me what I am looking for.

MR MBANA PETER THABETHE: That is correct Chair. Not only in a dairy but also in a number of other agricultural activities.

CHAIRPERSON: Yes, yes, yes. Okay.

ADV LEAH GCABASHE SC: Had – I want to pause for one minute to reflect on the R17 million for the three dairy plans.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Prior to deciding on these dairy projects did you sit down and work out any kind of costing for what you thought was a bright idea? Did you put money to the thought and work out an estimate on what it was going to cost you from beginning to end to put up these three dairy projects which you mention in paragraph 2.2?

MR MBANA PETER THABETHE: Chair you can do a desktop study but
10 without having done the due diligence you would not be able to say how much it will cost. You may have an idea you want to build a house of not exceeding R1 million but then the designs that you require will then inform you how much it will cost. That is what we had in mind this is what we want to do then the studies and the plan will then come back and tell us this is the cost. Then once you have the cost then you decide whether you want to implement the plan you will have the money or you will not be able to implement the plan because you may not have that level of money.

ADV LEAH GCABASHE SC: So you will pay R17 million for something
20 that you might not follow through on simply because somebody had a bright idea and said let us have a few dairy farms in the Free State?

MR MBANA PETER THABETHE: Chair hence you do what you call a preliminary study. You do a preliminary study and your preliminary study will be something that you will mostly rely on desktop information because you have not done the details. That preliminary study then

will inform you whether you can proceed and appoint. Now a preliminary study tells you that yes indeed that area is suitable but you may spend money and discover that in terms of the environmental impact assessment you cannot do it, it is declined. But you would have spent the money to do the environmental impact assessment. You do the analysis of the water. You do the analysis of the soil. You check them either you get a positive or a negative. You will never have information that informs you what – whether you can do it or not without having spent money. So you have to do your assessment and you pay
 10 for those assessments and then the answer comes back to you and say yes you can do it or no you cannot do it. It is like prospecting for mining. You go there and you drill and after you have paid and drilled you either yes there is coal here or no there is no coal here but you have spent the money. So if you want to do a diary you have to do an environmental impact assessment whether it will say yes or no and you pay for doing that.

ADV LEAH GCABASHE SC: But this is precisely the point.

1. You must budget. You must have a budget. If I am going to build a house I must make sure that I save for a period of five years so
 20 that when I eventually have enough money I then follow through on getting designs etcetera, etcetera. I do not start with the designs and then decide that the house is too expensive. It – this is putting the cart before the horse and it is not – it will not be the first time as you will see between today and tomorrow that I will be making the comment. It cannot be right Mr

Thabethe that simply because I have a bright idea tax payers money should be thrown into finding out whether this particular idea is practical or not. You see your mining idea your mining example. I go to the bank so I am taking on an obligation. I am responsible for dealing with that bank. It is not the same with tax payers' money. You cannot dream up something it cannot be right that is all I am saying. It just does not sound right that you dream up something and then you throw money at the dream.

CHAIRPERSON: I think give him a chance to comment on what you
10 saying, what you saying to him.

MR MBANA PETER THABETHE: Ja.

CHAIRPERSON: What do you say Mr Thabethe about these propositions?

MR MBANA PETER THABETHE: Ja Chair I do not agree. You – I do not know maybe it is only in the agriculture industry but I believe it is also in other industries. Planning is not as cheap as we – sometimes we think. You have to do a proper plan and you pay for the plans. If we are to develop plans for agricultural development we have to do them properly and it requires money. Plans at instances are being
20 developed and they become negative and you have paid for those plans development. At a face value you may think yes in this site that I have bought I can build a house and after you have done the survey your engineers come and tell you; you cannot build this building here. So those are the things that will happen because you will never know until you have done the study. So that is what happens in agriculture. You

have to spend for your plans and designs and surveys and then you come back and you say yes we can proceed or no.

ADV LEAH GCABASHE SC: I – can I proceed on the same paragraph you then say: There is a need for a strategic partner to partner the Department for completion of the projects. In other words you did not have the money for these projects, it is a question.

MR MBANA PETER THABETHE: Yes Chair we have realised that we would want to assist the dairy industry but in our coffers we will not have enough money to do so hence we then looked for strategic
10 partners to assist us and deal with this particular issue.

ADV LEAH GCABASHE SC: Again tomorrow I will go through the Dawie Maree document with you.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: And address some of the propositions that you make.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Chairman I notice I had not realised it is twenty-five past four already.

CHAIRPERSON: Yes maybe – well if you want we go up to half past
20 but if whatever you have would be better dealt with tomorrow that is fine. I do want to ask Mr Thabethe some question. Now Mr Thabethe if you were still going to have a feasibility study undertaken why did you have to undertake a trip to India before a feasibility study was done? Because as I see it the trip to India could wait until you have a feasibility study that gives you a basis to say okay maybe we will

proceed because a feasibility study and other plans that you talked about could have effectively said forget it is not viable to do – to pursue this idea. But if the feasibility study were to come later and say that you had already undertaken the trip to India you would have wasted tax payers money. Why could the trip to India not wait until that had been done?

MR MBANA PETER THABETHE: Chair it has to inform what you want to do because when you do the feasibility study then you must be informed by what do you want to do? If I put an example. We might
10 have done a feasibility study on dairy production but there would be no factors that will inform us to say after the dairy then what? What would be the process and what would you do and the how part? So that was very critical to assist us because the model that we have been looking at we wanted to do we did not have and we have been looking at strategic – different strategic partners. We have looked at partners in South Africa like I have mentioned before and said we would want somebody to come and partner with us to achieve 1234 and we were not able to get anybody that says yes we are interested we want to work with you.

20 **CHAIRPERSON**: Do you mean by this time you prepared this request to the Premier to give you permission to go to India you had already approached other entities within South Africa to see whether they could be your strategic partners in this project?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Oh do you remember some of them?

MR MBANA PETER THABETHE: The major partners Chair that we had interacted with them I think in one of my – I am trying to think in one of the affidavits.

CHAIRPERSON: One of the documents okay we can identify it tomorrow.

MR MBANA PETER THABETHE: Later yes.

CHAIRPERSON: We can get the names.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: But I go back to my question. Why travel to India first
10 before that study is done rather than have the study done and then if
the result of the study suggest that this is something worth pursuing
then maybe then go to India but it could say it is not sustainable then
you would not go – you would not spend the money you would have
spent on the trip?

MR MBANA PETER THABETHE: Chair the intention is to look at best
practices. What we have learnt in the industries. Different role players
do things differently. You may do the feasibility study and when you
get to an agreement with a strategic partner you find that some
information are lacking which they require to be part of the strategic
20 part – of the feasibility study. Because when you do that feasibility
study you indicate what information do you require and then it is then
done in line with the information that is being required. So if you do
not know who you are going to be dealing with let me use an example.
You going to be producing milk that it is only for local – I am trying to
get the correct way. But it has to be informed by – by your plans

moving forward. Are you going to be cultivating for pastures? If yes or are you going to be feeding the cattle standing there. Those things are very critical because you may either do the soil analysis or you may not do the soil analysis. So it is very critical to be informed by the – by what kind of systems do you want to run.

CHAIRPERSON: But I would have thought that the feasibility study and whatever other studies that may need to be done the brief to the people who are going to do that would be this is what we are thinking of doing. Do the study, do the research, do whatever is necessary to see whether
10 it would be viable or whether it would not be viable if it is done along this model but maybe viable if it is done along - on the basis of another model or it is guaranteed of success if you do it with another model.

So they look at the whole picture and they - they know the conditions in the Free State. They know the conditions in Vrede. They know what is happening to dairy farmers around. They know the markets and - and maybe you say to them look at what is happening in other countries if there is something that we might have to look - look at in order for this kind of project to be successful here.

They go and do that. They come back with a study that says
20 you know what if you are going to use this and that and that model here in Vrede it is not going to work but if you are going to use this model that we see is been used in India by Paras then this has a chance of working. Then you undertake the trip to - to India to look at Paras. That is - that is how - that is - that is my thinking. What is wrong with that thinking?

MR MBANA PETER THABETHE: It - it can be done Chair.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Along that way. It - it might be the expensive one ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Because now you have to do research on - on a number of models and - and your cost will then increase because those people that would apply will have then to look at different scenarios and it might escalate your cost. Whereas when you
10 are very specific to say look at this model then your costs are confined to that specific model.

CHAIRPERSON: So you think it - it may depend in certain circumstances you say it may be cost effective to do the trip to India before you do the study but in other circumstances maybe ...

MR MBANA PETER THABETHE: May ...

CHAIRPERSON: It might be acceptable to do it later depending if - if the study suggests that it is worth doing it?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Hm, okay. You reserve everything for tomorrow.

20 **ADV LEAH GCABASHE SC:** I would like to Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: It has been a long day.

CHAIRPERSON: Okay. Alright. We will adjourn then today. Do you request that we start earlier or we can - we should stick to 10?

ADV LEAH GCABASHE SC: We are in your hands on that one

Chairman.

CHAIRPERSON: Yes, but in terms of your estimate of how much time you will need.

ADV LEAH GCABASHE SC: Mic - mic Chairman.

CHAIRPERSON: I am sorry. Yes in terms of your estimate of how much time we might need tomorrow have you got an idea whether there is a need to start earlier or not?

ADV LEAH GCABASHE SC: I think we will only finish after lunch quite frankly Chairman.

10 **CHAIRPERSON:** Oh, okay. We can start at 10.

ADV LEAH GCABASHE SC: So if you would prefer to start early at half past nine.

CHAIRPERSON: *Ja.*

ADV LEAH GCABASHE SC: We could do that ...

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: But we are likely to finish even if we start at half past nine.

CHAIRPERSON: *Ja.*

20 **ADV LEAH GCABASHE SC:** We are likely to finish after lunch not before lunch.

CHAIRPERSON: No that - that is fine. Then let us just start at 10 if we would finish anyway. Okay, alright. We - we are going to adjourn until tomorrow. Tomorrow we will start at 10 o' clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 16 AUGUST 2019