

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**BRAAMFONTEIN CHAMBERS**

10

**13 MARCH 2020**

**DAY 223**

20

**PROCEEDINGS RESUME ON 13 MARCH 2020**

**CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

**ADV PAUL PRETORIUS SC:** Morning Chair.

**CHAIRPERSON:** Yes.

**MR AGRIZZI:** Morning Chair.

**CHAIRPERSON:** Good morning Mr Agrizzi. We are starting with a matter relating to Mr Agrizzi and Ms Jabulele Elizabeth Sishuba and then we will thereafter proceed with the evidence that we were hearing yesterday. Yes Mr Pretorius.

- 10 **ADV PAUL PRETORIUS SC:** Chair the purpose brief hearing this morning is to allow Mr Agrizzi to put an apology on record in respect of evidence given in January last year. But because it is a public apology it is necessary to place the words that Mr Agrizzi would use in their context and if I may take five minutes to do so?

**CHAIRPERSON:** Yes.

- 20 **ADV PAUL PRETORIUS SC:** On the 24 January 2019 Mr Agrizzi testified and amongst other things gave testimony implicating Ms Sishuba by saying that she had received money from BOSASA or one of its subsidiaries. A Rule 3.3 Notice was issued to Ms Sishuba and she consequent upon that made an application requiring the allegation to be retracted and if there was no retraction she would apply to cross-examine Mr Agrizzi. In response to that and on affidavit Mr Agrizzi on the 8 April 2019 retracted the allegation and apologised. A further affidavit was filed by Ms Sishuba which noted the apology but raised the issue that the apology appeared to be somewhat qualified and

proffered the wording of a different apology. There was a further response filed by Mr Agrizzi on the 2 August which confirmed the contents of his previous affidavit and he stated quote “I take full responsibility for the error that occurred”. The application by Ms Sishuba came before you on the 3 – well came before you in – later in 2019 during August and on the 3 September 2019 you Chair made a ruling saying that Ms Sishuba’s application was justified but that no order was necessary to be made and you noted that Mr Agrizzi would apologise on record in an open hearing. If I may just quote from your  
10 ruling Chair. You stated on the 3 September at page 44 of SEQ4

“I think it is enough that Mr Agrizzi has said:

1. He made an error by suggesting that Ms Sishuba had received bribes from BOSASA.
2. He said he takes full responsibility for that.
3. He said he apologises to Ms Sishuba for that.
4. He said he will repeat all of this when he comes before the commission next time.”

In those circumstances you said Chair it was unnecessary for you to make any positive order. Arising out of that background Chair Mr  
20 Agrizzi is now here to place on record his apology. Mr Agrizzi.

**MR AGRIZZI:** Chair good morning again.

**ADV PAUL PRETORIUS SC:** I am sorry perhaps you should be sworn so that the apology is on oath.

**CHAIRPERSON:** Yes he should be sworn first. Please administer the oath or affirmation.

**REGISTRAR:** Please state your full names for the record?

**MR AGRIZZI:** Angelo Agrizzi.

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

**MR AGRIZZI:** No I do not.

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

**MR AGRIZZI:** Yes I do.

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

**MR AGRIZZI:** So help me God.

**CHAIRPERSON:** Thank you. Yes – Yes Mr Agrizzi.

**ADV PAUL PRETORIUS SC:** Mr Agrizzi I understand you have prepared an apology.

**MR AGRIZZI:** Yes.

**ADV PAUL PRETORIUS SC:** And are ready to place it on record.

**MR AGRIZZI:** Yes.

**ADV PAUL PRETORIUS SC:** Would you do so please?

**MR AGRIZZI:** Chair and Ms Sishuba and your Counsel. I am truly, truly  
20 sorry it was – as soon as it was brought to my attention right in the beginning that there was a confusion and I have confused the names I already apologised so there was no – there was not malice intended. I think it was rough, it was confusing and everything happening so I am really sorry and I do not want to – I do not want to belabour the point but I think that I understand that it has done harm and damage and my

– and as I apologised to Ms Sishuba this morning and I said to her, sorry and she accepted it. So I thank you for accepting my apology and I really do. I made an error, a pure error and I am sorry and I understand in that – just it is damaging to people and I am sorry. I really am.

**CHAIRPERSON**: Thank you. Thank you. I think that we are therefore done Mr Agrizzi has once again apologised to Ms Sishuba has said that that was an error and I think that is where it should end. Thank you. Are you ready that we release Mr Agrizzi?

10 **ADV PAUL PRETORIUS SC**: Thank you Chair.

**CHAIRPERSON**: Yes. Thank you Mr Agrizzi you are released. Thank you very much.

**MR AGRIZZI**: Thank you Chief Justice.

**CHAIRPERSON**: Thank you. I will adjourn for five minutes to allow for rearrangements so that we can proceed with the evidence for the day. We adjourn.

**MEETING ADJOURNS**

**HEARING RESUMES**

**CHAIRPERSON**: Good morning Mr Soni, good morning everybody.

20 **ADV VAS SONI SC**: Morning Chair.

**CHAIRPERSON**: Are you ready?

**MR MOLEFE**: We are.

**CHAIRPERSON**: Okay let us proceed. Ja thank you.

**ADV VAS SONI SC**: Chair before Mr Molefe's evidence perhaps he should be sworn in. But before he gives his – oh perhaps – and I

should do it while he is on oath.

**CHAIRPERSON:** Ja no the oath that he took two days ago will continue to apply.

**REGISTRAR:** As – as it pleases.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** Mr Chairperson yesterday or I think it was on Wednesday I indicated that two people had not been served because they were in Zimbabwe.

**CHAIRPERSON:** Yes I hear what you..

10 **ADV VAS SONI SC:** In regard to the PRASA matter.

**CHAIRPERSON:** You will have to raise your voice again.

**ADV VAS SONI SC:** Oh – oh sorry Mr Chairperson.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** I – on Wednesday I indicated that two people had not been served because they were in Zimbabwe. It is the ideal opportunity to point out that they are referred to in paragraphs 47.2 and 47.3. 47.2 of Mr Molefe's affidavit Chair is – which is SS6 refers to a Mr Mahlangu who was the General Secretary of Satawu and a company known as Bashume. They were the two persons who were not served  
20 because they are in Zimbabwe and we could not find addresses for them. But I thought I would just complete the picture.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** That – because they are specifically mentioned.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** In the last part of the evidence Mr Molefe gave.

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

**ADV VAS SONI SC:** Now Mr Molefe yesterday you were pointing – when you ended you were sketching the background against which Mr Montana left PRASA and you were saying there were various incidents of support for him and strikes and so on, do you recall that?

**MR MOLEFE:** I recall Chairperson.

**ADV VAS SONI SC:** And one of the questions that you reflect on in your affidavit Mr Molefe is how is that given all of these disruption at PRASA, given all the scandal that wracked PRASA Mr Montana  
10 survived? That is a matter you address in your affidavit. Will you outline to the Chairperson what your view is as to how that came about?

**MR MOLEFE:** Chairperson I would like to place on record a minor correction.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Regarding the point that was raised by Counsel in respect of individuals or persons.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Who could not be served.

20 **CHAIRPERSON:** Yes.

**MR MOLEFE:** With notices.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** I need to clarify the second part of it. Bashume is actually not a person unless we are talking about juristic person.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** It was a company.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** That was established by Mr Mahlangu and his colleagues at Satawu.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** An investment company.

**CHAIRPERSON:** Yes. Yes. Yes. I took it that Mr Soni was using persons to include a juristic person but that is maybe because when I read I – the affidavit I understood it to be a reference to a company.

10 **CHAIRPERSON:** But of course it may be that the point you make is that – is that company is registered in South Africa.

**MR MOLEFE:** In South Africa.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Yes. Mr Chairperson as I understand it and the reason it could not be served is the – the – Mr Mahlangu is the sort of creator or the company and the company could only be served through him. And you will recall Mr Chairman on Wednesday I said it was a person and a company. And that is the association between Bashume and Mr Mahlangu.

20 **CHAIRPERSON:** Hm. But if it is registered in South Africa it ought to have a registered address in South Africa.

**ADV VAS SONI SC:** That is what could not be found Mr Chairperson.

**CHAIRPERSON:** Oh that could not be found. And was a check made or was there somebody who checked in the relevant company offices – I mean registers and find – found out? Because as long it is registered

in South Africa it should have a registered office.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** And that registered office would need to have a physical address.

**ADV VAS SONI SC:** Yes. Chairperson that was done by the section but can I get clarity on that and when we do get clarity we will place it on record.

**CHAIRPERSON:** Yes. I – so that needs to be checked because there might be nobody there at the registered office but as long as it remains  
10 the registered office of the company then you can even serve – there are various ways of service.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Even if there is nobody you can – you can serve.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** And if the owners of the company have decided not to make any arrangements as to how they receive correspondence and other – and court processes that are sought to be served then that may be their own problem.

**ADV VAS SONI SC:** Yes.

20 **CHAIRPERSON:** But we would need to be seen to have served at the registered office. And that would serve – if Mr Mahlangu is presumed the Managing Director he could be served in – on the same address I would think.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Hm.

**ADV VAS SONI SC:** I will attend to that Chairperson.

**CHAIRPERSON:** Well – well thank you Mr Molefe for bringing that clarification up. That of course raises the question of what do you do if indeed the one person – juristic person is registered in South Africa and has an address in South Africa but no attempt has been made to serve on that address.

**ADV VAS SONI SC:** I can say to you from what I have received from the administrative section of the commission Chairperson that an attempt was in fact made and what is recorded here is there are no  
10 contact details either for Mr Mahlangu or Bashume.

**CHAIRPERSON:** Yes but the question is, was there an attempt made to serve on the registered address?

**ADV VAS SONI SC:** Yes.

**ADV VAS SONI SC:** Chairperson may – may I suggest the following process Chairperson.

**CHAIRPERSON:** Hm.

**ADV VAS SONI SC:** That we make those enquiries as soon as we can and if there is a con – there are contact details then we effect serve this now and just extend the period for the 3.3 the rights contained in  
20 3.3 to apply from the time the service has been effected.

**CHAIRPERSON:** Well I do not particularly remember how serious the allegations are that led to Mr Mahlangu and Bashume but it is important that if at all possible all reasonable measures be taken to ensure that service is affected.

**ADV VAS SONI SC:** Yes

**CHAIRPERSON:** And – and it does not necessarily mean that the Rule 3.3 Notice has to be given to a person if there is nobody and attempts have – reasonable attempts have been made to get somebody that at least those attempts should be made and then somebody should – if it is not a return of service from a sheriff then somebody who made those attempts needs to depose to an affidavit setting out what attempts were made.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** The one option of course is that because those  
10 attempts are yet to be made to serve on the registered address of the company which could be used for Mr Mahlangu as well one option is that Mr Molefe's evidence would skip the part relating to Mr Mahlangu and Bashume until that has been done.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** It would just – we would have to apologise to Mr Molefe that he would have to come back for what might not take long but because it is necessary that attempts that were not made should be made. So that is – I think that probably is the safer route.

**ADV VAS SONI SC:** Yes.

20 **CHAIRPERSON:** Mr Molefe how do you feel about having to come back to deal with that later after these attempts have been made?

**MR MOLEFE:** I am happy with the guidance that I will have from the Chair and the Counsel.

**CHAIRPERSON:** Thank – thank you very much.

**ADV VAS SONI SC:** As you please Chair. Mr Molefe I just want to

return to the issue you reflect on in your affidavit namely how was it that Mr Montana with all the scandal surrounding him and PRASA would survive from 2008 to 2015?

**MR MOLEFE:** Chairperson I indicate in my affidavit that I found it quite intriguing that despite the findings by the High Courts in this land and the Public Protector in her reports about corrupt activities of Mr Montana. He continued to – to – to go around with nobody really taking up those matters. The – the first point we – I make in an attempt to look at what might be the cause of that and the relationships between  
10 Mr Montana and certain political officers is that during 1990's – late 1990's and early 2000 Mr Montana and a gentleman whose name features prominently throughout and in particular in the Swifambo contract, Siyaya relating to the Braamfontein Depot and several other services provided to PRASA worked for the Department of Public Enterprise under Minister Jeff Radebe. Mr Montana was the director in the office of the Minister – Minister Radebe and Mr Makhensa was a director in the same department, different division but reporting to the Department of Public Enterprises. The second point I make is that when Minister Radebe in 2004 was appointed Minister of Transport Mr  
20 Montana followed him and when he got back I think he ended up at the high position of Deputy Director General which is a big jump from what he was at – at Public Enterprises. Around that period when Minister Radebe was the Minister of Transport the government initiated an ambitious programme of taxi re-capitalisation with a view to improving taxi services in South Africa giving them vehicles which ostensibly were

to assist in minimising breakdowns and accidents that affected the passengers. When this programme....

**CHAIRPERSON:** I must – I must just confess that I never quite understood that – that programme but it is okay. I am saying I must just confess that I never quite understood that programme of re-capitalisation of taxis or whatever but it is fine. Maybe I just did not – never got somebody who could explain it properly.

**MR MOLEFE:** Thank you very much Chairperson.

**CHAIRPERSON:** Hm. But I must just ask Mr Molefe from here do you  
10 hear me well because I did pick up yesterday.

**MR MOLEFE:** I do, I do Chairperson.

**CHAIRPERSON:** You do okay. Yesterday at some state I was not sure whether you could hear me well.

**MR MOLEFE:** There was a time when one question I could not hear.

**CHAIRPERSON:** Oh okay. Okay.

**MR MOLEFE:** Except after it had been repeated. Well it might also being my mind being elsewhere at the time but maybe (indistinct).

**CHAIRPERSON:** Okay. Alright. You were continuing and I interrupted you. You were saying there was this big programme that – of taxi re-  
20 capitalisation that the Department of Transport came up with.

**MR MOLEFE:** When the taxi re-capitalisation programme began two things happened. Mr Montana was given the responsibility to own that process. It means to be the one who directs the taxi re-capitalisation programme. The second thing that happened was that Mr Mabunda Makhensa decided to – to go into the private sector. He became a – a

private you know...

**CHAIRPERSON**: Business person.

**MR MOLEFE**: Business person.

**CHAIRPERSON**: Hm.

**MR MOLEFE**: And what happens is that he then becomes one of those perhaps even the key one who gets a tender ostensibly to provide transactional advisory services with regard to that taxi re-capitalisation programme. The third point we – we make which I make – I keep saying we – like one of the witnesses previously. The third point I  
10 make is that a few months later and as a result of the – the South African Railways Commuter Corporation which was an offspring of what used to be a big organisation that included Transnet and others – including South African Airways at the time now it had been created as a new organisation. Minister Radabe then appointed – well that organisation changed its name to what is currently known as PRASA. That is SARCC here became PRASA. Then Minister Radabe appointed Mr Montana – firstly he was – he put him on the Board whilst he was still in his office later he appointed him Group CEO of that organisation. Now we looking at two individuals Mabunda and  
20 Montana. When Mr Montana moved to SARCC and what is now known as PRASA Mr Mabunda emerges again as a very important service provider to PRASA. He provided a whole range of what they called transactional advisory services. He was advising on the major signalling rollout programme which I referred to earlier on in my evidence as one that had to do with the establishment of this nerve

centre in Kalkfontein by Siemens and the rollout in KwaZulu Natal under the auspices of Bombardier Transport Signalling division. The third one was Talis Africa with their black partners in the – in the Western Cape. So Mr Mabunda then was brought into be the transactional advisor to all these important projects.

**ADV VAS SONI SC:** Sorry Mr Molefe and I know you want – I just want to work out ...

**CHAIRPERSON:** Raise your voice Mr Soni please.

**ADV VAS SONI SC:** Oh sorry ja Chairperson. What were Mr  
10 Mabunda's qualifications to be given these massive contracts?

**MR MOLEFE:** Chairperson I would not want to speculate about that. I do not know.

**CHAIRPERSON:** You do not know yes.

**MR MOLEFE:** But when we did other investigations say for example with regard to Swifambo and so on he did not appear to know much or anything about the leasing of locomotives or manufacturing or so. But I may say that by the way in the evidence that emerged as a result of the investigations conducted on Swifambo it appeared that he had bought a company, a – a micro lending company which micro lending company  
20 was then transformed into Swifambo. I have no evidence of any other qualifications that he would have had to justify him been given all these contracts save that he had worked in this very important office that had this big programmes to roll out.

**ADV VAS SONI SC:** Just on that score you say that he also headed Siyaya Engineering Consultancy.

**MR MOLEFE:** Yes he did so Chairperson.

**ADV VAS SONI SC:** Do you know if he had any engineering qualifications?

**MR MOLEFE:** I – I have not personally established whether he had engineering qualifications. That notwithstanding of course maybe he did have but he got all this important programmes with critical engineering requirements.

**ADV VAS SONI SC:** And you know that the evidence will be that Siyaya – the Siyaya companies earned more than R1 billion from PRASA or  
10 were paid more than R1 billion from PRASA. I am just placing that on record.

**MR MOLEFE:** Well at this stage I would not say I know that evidence would be led in that regard because I have seen anybody's statements saying that. My statement does say he – he was paid approximately – Siyaya was paid approximately R900 million.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** So – so.

**ADV VAS SONI SC:** It – sorry carry on.

**MR MOLEFE:** No it is fine.

20 **ADV VAS SONI SC:** Now you also mentioned Mr Daniel Mthumkhulu in paragraph 51 of your affidavit. What role did he play in – in the formulation of these policies or the – the award of these contracts?

**MR MOLEFE:** Mr Daniel Mthumkhulu is somebody designated Chief Engineer at the time at PRASA although evidence later demonstrated that he had nothing that would have brought him anywhere near being

called Chief Engineer was responsible for most of these programmes. He worked very closely with Mr Makhensa. He is the kind of a person who would have made submissions to the Group CEO on approvals of a range of these projects. I will be guided by Counsel. I can go on and deal with others where he has got a role because now...

**CHAIRPERSON:** Yes.

**MR MOLEFE:** I do not know how far to go.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** But maybe I should leave that for when we come to some  
10 of those points.

**ADV VAS SONI SC:** We – we will and we will – we will deal with what the Supreme Court of Appeal especially said about Mr Mthumkhulu. So we – we – I want to return to that because this is something that is important for the commission for one but also something that has to be set out in public.

**CHAIRPERSON:** Maybe what might not a bad idea Mr Molefe is that you make a note of some of the issues that you believe are important and at the end of Mr Soni's questions if I can give you a chance if there are other matters that you believe are important that you should tell me  
20 then you can deal with those if – if you believe that they are important. Ja.

**MR MOLEFE:** I am happy to do so Chairperson.

**CHAIRPERSON:** Yes, Yes. Okay.

**ADV VAS SONI SC:** Now thereafter just coming to Mr Mthumkhulu you – you in fact referred to the judgments of the High Court in these – of

the High Court and the Supreme Court of Appeal in the Swifambo matter and the comments they made about Mthumkhulu. You say at paragraph 55 of your affidavit.

**MR MOLEFE:** I do Sir – I do Chairperson.

**ADV VAS SONI SC:** Now can we then deal with the Swifambo matter and Mr Molefe your affidavit refers to the – the judgment mainly of the Supreme Court of Appeal and we will refer specifically to certain paragraphs of the judgment. Before we do that can you tell the Chairperson what the Swifambo contract entailed?

- 10 **MR MOLEFE:** Chairman the Swifambo contract entailed the – initially it was intended to be – and that is what was articulated in the RFP the leasing of locomotives which would be used for here what was called the Mine Line Passenger Services but also used in routes in the – in the Metro areas where of course there were a lot of failures of old locomotives which we said were not re-capitalised for 40 years. So that was supposed to be. But of course in the course of that process of procurement I suppose something that typifies how procurement processes were manipulated suddenly Swifambo was allowed to – to offer a proposal on the manufacturing of locomotives which was not
- 20 part of the RFP right at the beginning. So the process went on, there were specifications of what would be needed by PRASA because PRASA was going to operate on the rail tracks and signalling systems that had been designed by – at the time when Transnet was still that big organisation with everyone inside and they – what was to be leased or procured needed to comply with the Rail Safety Regulators

requirements or they would have had to be approved by the Rail Safety Regulator but they also needed to comply with rail network of Transnet.

**ADV VAS SONI SC:** Now you have intimate knowledge of the Swifambo matter because you made the affidavits in support of PRASA's application to review and set aside those awards, am I correct?

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

**ADV VAS SONI SC:** Now just again, as a general proposition, without going into details, what were the points that you took, when I say you,  
10 I'm talking about PRASA took in asking the Court to review and set aside the award of the contract to Swifambo?

**MR MOLEFE:** The investigation, Chairperson that we conducted demonstrated, conclusively that, that procurement process was flawed, was corrupt – well let me say corrupted that Swifambo itself notwithstanding the fact that it did not meet the requirement set out in the RFP, this being amongst others, the need for them to have a track record in rail business, either being leasing or manufacture they needed a track record. Secondly they needed to demonstrate that they had the skills necessary to carry out a programme of that size and as  
20 complex as it was. The third point was that they needed to have, and I think it will be an element that includes that capacity, sufficient qualified people to carry out the programme. Fourthly it was a requirement that a bond deposit of 10% of the value of the contract be paid upfront. They also needed to demonstrate that they would be able to implement the local content requirement which is often included in

the PPPFA. Now in respect of all of those matters, Swifambo did not qualify. I needed to have say – said also earlier on when I said that there was a need to comply with the rail safety network, the rail systems network in South Africa, that in fact, initially, what should have been procured by PRASA would have been in the context of Europe and Spain would have been Euro 3000 and Euro 3000 is a model of a locomotive that would have complied in all respects with the requirement of South Africa including Israel, Narrow-gauge, the height of the electric pylons, the pantograph on top of the locomotive and so  
10 on but in the end what was procured was what was known as Euro 4000.

It was so because the company Vossloh which, at this stage was not bidding to supply these locomotives was also advising PRASA on what it needed and that company, in Europe, in Spain and Barcelona had already discontinued the production line for Euro 3000 and they started the production line for Euro 4000. It would appear that they did so because there was no longer traction for that product where they were selling their locomotives. So they then influenced PRASA to buy what, more or less, was from the shelf, no longer – according to the  
20 specifications set in the RPF and interestingly enough, I don't want to go into the details of what happened in Court, but the evidence that emerged also was that, in fact, the company that became the sub-contractor of Swifambo, but only after the contract was concluded with Swifambo which had nothing – no capacity to provide locomotives. In their own report, indicated that, in fact, they were in trouble. So

PRASA's contract was the biggest ever and a life saver for Vossloh. I do need to say that – I was asked about Mr Daniel Mthimkhulu earlier on, Daniel Mthimkhulu was pretty central to the design of the specifications, he had interacted very closely with Vossloh, he was the one invited by Vossloh to persuade the company, PRASA to go along with Euro 4000 which later was baptised in South Africa to Afro 4000.

**ADV VAS SONI SC:** That's the background and that's what you had set out in your affidavit in support of the review application, would I be correct.

10 **MR MOLEFE:** That is so sir, it's easy to say [indistinct] Chairperson that I had no occasion to refresh my memory but - by reading the affidavits but if there are minor differences really they – I don't think they'll be material, I think what I've presented is the essence of the message.

**CHAIRPERSON:** And I think what you have presented seems to be very much in line with the judgements that were given.

**ADV VAS SONI SC:** So can I then say the first issue that I want to deal with is the – well what was the outcome when the matter went to the Gauteng Local Division in Johannesburg, the outcome of the review  
20 application?

**MR MOLEFE:** Chairperson when the matter went to the Gauteng High Court, our application – firstly let me say was to have the contract declared irregular and to have it set aside as being unlawful, that is what the Court granted, it declared, in a very scathing judgment that, that contract was corrupted from the beginning, it was irregular, it was

unlawful and failed to be set aside.

**ADV VAS SONI SC:** Okay we deal with the basis on which was done, the matter then went to the SCA.

**MR MOLEFE:** There is just one point I need to make, I hope counsel does not get irritated with me.

**CHAIRPERSON:** No.

**MR MOLEFE:** Because I don't know if we're going to get the opportunity to get to it.

**CHAIRPERSON:** Yes.

10 **MR MOLEFE:** We come down showing the relationship between Mr Montana and Mabunda. We then deal more with his relationship with Mthimkhulu but it was there because he appointed, then, this Chief Engineer and he was reporting to him.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** In that case before the High Court of Gauteng, Mr Montana applied to become the friend of the Court but basically saying that there is evidence that PRASA should be placing before the Court, it is not. One would have expected that he would say to PRASA, I worked in this company there are these other matters that you seem to  
20 have left out, he did not but what emerged in that – his application, was that fundamentally he wanted to defend the Swifambo contract.

**CHAIRPERSON:** Oh okay.

**ADV VAS SONI SC:** So can I then, just on that point, Mr Molefe, ask you to look at the judgments bundle please.

**CHAIRPERSON:** Just tell him what's written on the spine. Also for the

record just say what is written on the spine of the bundle?

**ADV VAS SONI SC:** Chairperson it will be SS3 – sorry SS2, judgments it will be bundle A, SS2 judgements, used.

**CHAIRPERSON:** So it's Bundle A.

**ADV VAS SONI SC:** Bundle A and SS2.

**CHAIRPERSON:** And he Judgment is ...[intervenes].

**ADV VAS SONI SC:** It's the first judgment in that...[intervenes].

**CHAIRPERSON:** Ja okay, so that's what page of the bundle is it?

**ADV VAS SONI SC:** Page 3, Mr Chairperson – sorry page 3 of the  
10 record – of that bundle.

**CHAIRPERSON:** Are your bundles not sequential here or they are not – okay it's page 1 of the judgment that is the judgment of Judge Francis.

**ADV VAS SONI SC:** And then it will be the second page of that judgement.

**CHAIRPERSON:** There's supposed to be – I think that's just confusing but are you able to find it under SS2 Mr Molefe, you have found it?

**MR MOLEFE:** I have found it chair.

**CHAIRPERSON:** Ja okay.

20 **ADV VAS SONI SC:** And for the record Mr Chairperson, this will appear at SS2, page 3. Could you read paragraph 3 of what Judge Francis said into the record, Mr Molefe?

**MR MOLEFE:** Are we on page 3?

**CHAIRPERSON:** What paragraph number Mr Soni?

**ADV VAS SONI SC:** Page 2 of the judgement but page 3 of the Bundle of SS2.

**CHAIRPERSON:** No I think tell him the paragraph number of the judgement that you want him to read.

**ADV VAS SONI SC:** Paragraph 3 Mr Molefe.

**CHAIRPERSON:** Ja I think you may have said page 3.

**MR MOLEFE:** That is what confused me initially we said page 3.

**CHAIRPERSON:** Ja I think he said page – okay paragraph 3, you want him to read that part, that paragraph?

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

**CHAIRPERSON:** Okay.

**MR MOLEFE:** The paragraph reads as follows, Chairperson,

“At the commencement of the proceedings I had an application brought by Lakhe Montana (Montana) who used to be the Group Chief Executive Officer (GCEO) of PRASA to be admitted as a friend of the Court. That application was dismissed with costs and reasons were provided in a separate judgment”.

**ADV VAS SONI SC:** So that is the point you wanted to make?

**MR MOLEFE:** I made earlier on.

20 **ADV VAS SONI SC:** Mr Chairperson that judgement is available – the application papers are available but we would make them available and have them as part of the record if you wish, but having considered them as a whole, we don't think it adds to what we are concerned with Mr Chairperson.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Then Mr Molefe, can I ask you to look at the second judgement there which is – appears at page 63 of SS2.

**CHAIRPERSON:** Assuming that the dividers have the same colours it's under 2 of the green dividers. I think the – Mr Soni the – in this bundle the pagination is still not how it should be for everything that's in the same bundle there should be a complete pagination from page 1 up to the end so that when you say Bundle A you just say page so and so without having to look at the page number of the particular document. So maybe at some stage that can be sorted out and for all others to follow.

10

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Are you there Mr Molefe, have you located the judgement?

**CHAIRPERSON:** That's the judgement of the ...[intervenes].

**MR MOLEFE:** It would seem in the document it is recorded as page 64 I have.

**ADV VAS SONI SC:** Yes you will see it says Supreme Court of Appeal Judgement.

20

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

**ADV VAS SONI SC:** Now I want to refer you to some of the paragraphs of the judgement and can I start with paragraph 4 of that judgement?

**CHAIRPERSON:** Of course Mr Soni, Mr Molefe can just make the important points without reading unless there is something significant

in a particular paragraph, then it should be read.

**ADV VAS SONI SC:** Now you were making the point that it was Mr Mthimkhulu who drafted the specs for this. What does the SCA say in that paragraph regarding the role of Mr Mthimkhulu?

**MR MOLEFE:** The SCA, Chairperson, and I'm paraphrasing, following what the Chairperson has said, held that - noted that Mr Mthimkhulu, as I said was the one who drafted the memorandum and made submission. He recommended that PRASA procures at that time 100 locomotives at the cost of R5billion and correctly stating that – because the fleet that  
10 PRASA had was outdated.

**ADV VAS SONI SC:** Then if you turn to paragraph 7...[intervenes].

**CHAIRPERSON:** I can say, Mr Soni, also that because this is a judgement as opposed to any other document, it's quite fine to just highlight even if you highlight.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** To say in this paragraph this is what – this is the conclusion reached by the Supreme Court of Appeal and that paragraph, just highlight the conclusions and then if Mr Molefe wishes to add any perspective in regard to any conclusion of the Court, then  
20 he can do so.

**ADV VAS SONI SC:** Mr Chairperson, in the sense, Mr Molefe's affidavit itself does exactly that and maybe it would be better just to deal with the – because he actually sets out which paragraph he's speaking to.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** And perhaps I should just lead him on his affidavit.

**CHAIRPERSON:** Ja if he has captured, and I think he has in his affidavit we don't need to go to the judgement unless there is a paragraph where there's something special about how it's phrased or anything like that. If we just capture what were the important findings or conclusions reached by the Supreme Court of Appeal that should be enough.

**ADV VAS SONI SC:** Yes and I have checked them over again Mr  
10 Chairperson, they coincide.

**CHAIRPERSON:** Ja, no that's fine as I say, unless Mr Molefe has some important perspective that he wants to highlight in regard to any particular finding.

**ADV VAS SONI SC:** So Mr Molefe, to place matters on record can I ask you to start looking at your affidavit from paragraph 61 and just indicate what – where the important points made by the Supreme Court, as you captured in your affidavit and you don't have to read everything there, you can just say at paragraph 6 this is what they dealt with, this is what they dealt with but it's then part of the record of the evidence  
20 before the Commission Mr Molefe, are you with me at paragraph 61?

**MR MOLEFE:** I am Chairperson, the paragraph 61 Chairperson, confirms the statement I made earlier on that Mr Mthimkhulu, in July 2011 submitted to Mr Montana, a recommendation in respect of – in which he was asking approval for procurement of 100 locomotives over a period of six years but a RFP was then published in November of the

same year, the RFP recommended – well was calling for procurement of 88 locomotives. My recollection is that, at the end of that process, in the final analysis, only 70 locomotives were ordered. So the...[intervenes].

**ADV VAS SONI SC:** But for the – and what was the price, was there going to be a change in price?

**MR MOLEFE:** The prices would change and the price changed then from R5billion to R3.4billion.

**CHAIRPERSON:** When I read the Supreme Court of Appeal judgement  
10 I didn't pick up anything that may have been placed before Court that explained how the number of locomotives jumped from 88 to 100, I may have missed it. Do you recall if there was any information as to how the number jumped from 88 to 100?

**MR MOLEFE:** Chairperson my - in dealing – attempting to deal with that question I must say that my experience as we – as a Board were interrogating these matters. We found that no hedging or no correct foreign currency hedging was effected, built into the procurement price to the extent that it was done. It was, for example, one that put exchange rates of rand to Euro at R10.40 per Euro. By the time this  
20 procurement happened the exchange rate had changed so the hedging was not protecting PRASA against the escalation. So as the Euro became stronger and the rand weaker the prices went up and when the price went up the budget being what it was for 88 locomotives, PRASA could no longer – or let me start off, being for 100 locomotives, could not afford to pay for 100 locomotives because it would have then meant

that it would need to put more money to meet this escalation of the Euro. So that is what then caused management to constantly reduce the numbers to try and deal with something that they believed would be manageable.

**CHAIRPERSON:** I may have misunderstood something, I thought you said the RFP had contemplated 88 locomotives but ultimately what was ordered was 100 and I was asking about that jump but what you have just told me seems to suggest that 100 may have been contemplated but because of there having been no hedging then a lesser number of  
10 locomotives had to be obtained?

**MR MOLEFE:** I think I was mistaken, let me try and take it in a chronological order.

**CHAIRPERSON:** Yes, yes.

**MR MOLEFE:** To clarify matters Chairperson.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** A memorandum for procurement of 100 locomotives is submitted to Mr Montana by Mr Mthimkhulu in July 2011, he says let's buy 100 locomotives.

**CHAIRPERSON:** Yes, yes.

20 **MR MOLEFE:** However when the RFP is issued, PRASA says no we'll procure 88 locomotives. I have no recollection of any motivation why Mr Mthimkhulu's request for 100 locomotives was not accepted as was.

**CHAIRPERSON:** Okay.

**MR MOLEFE:** Now – so the order is then – the RFP envisages 88 locomotives but because of the passage of time, and at that time the

price tag was R10.40 but as time lapsed the Euro was escalating, getting stronger, the rand weaker. Even the 88 locomotives could no longer be affordable on the budget that was set aside at that time. So management then reduced the numbers again I think to a lesser than 88 locomotives.

**CHAIRPERSON:** Yes, okay, no now I understand, I think I may have got the 88 and 100 wrong from what you say, the 100 came from the memorandum from Mr Mthimkhulu to Mr Montana but at the time of the RFP 88 was the number that was put to the RFP.

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

**CHAIRPERSON:** Yes okay thank you.

**ADV VAS SONI SC:** Chairperson just again, if I can put on my lawyer's hat, one of the points that this made is, there wasn't a need analysis for how many exactly were required. So that also, in a sense tainted the procurement process because when one procures for that amount of money one needs to say, well we need 20 or we need 50 or we need 100 and if you read, both the judgement of Justice Francis and Justice Lewis you will see, Mr Chairperson, that is part of the theme that emerges, aside from the issue that Mr Molefe...[intervenes]

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

**ADV VAS SONI SC:** Yes and then Mr Molefe you had finished now with Mr – what the specifications were. At paragraph 62 you detail what the SCA said about Mr Mthimkhulu, could you place that on record?

**MR MOLEFE:** Yes Chairperson, the Court held – the SCA held that Mr Mthimkhulu had no expertise for – on the subject that he was given

responsibility for but it also noted that he had been, if you like, just elevated and promoted to that position of Chief Engineer and ...[intervenes].

**ADV VAS SONI SC:** By Whom?

**MR MOLEFE:** By Mr Montana and the Court noted that his rise was maturing, I don't know good English, but I think it means that very rapid, very fast, concomitantly what – together with this rise was also the rise in his salary increase.

**ADV VAS SONI SC:** And as regards his qualifications what did the  
10 SCA say?

**MR MOLEFE:** The SCA had established – held that he didn't have the qualification and it arrived at that conclusion, Chairperson, because in various ways Mr Mthimkhulu had lied about his qualifications. He claimed that he had a Bachelor of – Bachelor degree in technical – in engineering, something like that and he also later argued that he had a PHD, Doctorate from a German University and in one meeting where I sat with him he produced a letter, because we said, show us the award that you qualify, you have this qualification and he produced a letter, I said, no, no the award of a Doctorate is not done in this way. Why is it  
20 that this appears to be just a letter that you would just show to people, where we want to see the real award by the University. He did not have that, in the end of course, it was established that he didn't even have the technical diploma that he said he had.

**ADV VAS SONI SC:** Now one of the matters that the SCA deals with in paragraph 7 is...[intervenes].

**MR MOLEFE:** Well maybe Chairperson, I should say that in order for Mr Mthimkhulu to get where he got to, he lied at different times. At one point he lied to the Board and to Mr Montana that a company called DP Shancke in Germany had offered him a job and he was going to leave the country to go and work in Germany and Mr Montana believing that Mr Mthimkhulu is an asset to PRASA said, no don't go we will pay you what that company was going to pay you. So that's how he found his way, I just wanted to put that on record as well.

**ADV VAS SONI SC:** Was there such an offer?

10 **MR MOLEFE:** There was – it was a fake letter the investigations proved that there had never been such an offer. The company that he said made him an offer didn't even know him.

**ADV VAS SONI SC:** And as regards his qualification just read the last sentence of paragraph 62 of your affidavit, what did the SCA say about his qualifications.

**MR MOLEFE:** The SCA categorically says,

“In fact he had no qualification at all”.

**CHAIRPERSON:** Tell me, did you ever, at any stage at PRASA, get to know whether, in his personnel file that PRASA is supposed to have  
20 kept, whether there were documents that purported to be degree certificates, diploma certificates that he may have used to mislead whoever appointed him or promoted him to various positions or did he just say I've got this qualification and that was accepted, was that something you ever got to know?

**MR MOLEFE:** My recollection is that he produced letters from various

institutions and I think in the case of the Vaal Technical College which is here in the South of Gauteng Province, he produced what purported to be a diploma. The institution rejected that and said that it was a fake diploma.

**CHAIRPERSON:** Thank you.

**ADV VAS SONI SC:** Now in regard to...[intervenens].

**CHAIRPERSON:** Mr Soni, you must help to keep your eye on time, we need to take the tea adjournment, we normally take it at quarter past eleven. Let's take the tea adjournment, it's now twenty-two minutes  
10 past, we will resume at twenty to twelve, we adjourn.

**REGISTRAR:** All rise.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us proceed.

**ADV VAS SONI SC:** As you pleases Mr Chairperson. Mr Molefe you were saying that Mr Mthimkhulu well according to the SCA funds Mr Mthimkhulu had no qualifications, what did they say about and, we have dealt with this in your evidence, what was the finding in regard to the specifications drawn up by Mr Mthimkhulu.

20 **MR MOLEFE:** The – the first point that the Court makes is that Mr Mthimkhulu contravened the Procurement Policy of PRASA which means Supply Chain Management Process that he actually used the specification provided to him by Vossloh he makes that what PRASA procured to suit what Vossloho required and Vossloh as I earlier indicated in my evidence had in May of 2011 given advice to PRASA on what its

requirement should be.

**ADV VAS SONI SC:** And what did it – sorry, sorry you were ...[intervenes].

**CHAIRPERSON:** It is okay.

**ADV VAS SONI SC:** What did it say about MrMthimkhulu's, about how Mr Mthimkhulu determined those specifications, you refer to it in your affidavit when you say the SCA agreed at paragraph 63.

**MR MOLEFE:** Well – well basically they our findings and it was in our investigations as well that Mr Mthimkhulu tailored the specifications to be  
10 in line with what the company at Vossloh required and in the and it had no relevance to the needs of PRASA there was no strategic procurement planning .

There was no need analysis as we said earlier on but they proceeded then to procure this locomotive to benefit both Swifambo and Vossloh and clearly therefore that it was what the Court states is that the – the tender process was corrupt.

**ADV VAS SONI SC:** Now, in regard to Mr Mthimkhulu's actions what did Francis J say regarding his state of mind?

**MR MOLEFE:** The Honourable Judge concluded that Mr Mthimkhulu  
20 conducted himself in a dishonest manner and that even Swifambo which is the company that he awarded the tender to, did not deny that conclusion.

**ADV VAS SONI SC:** And in regard to Mr Montana's role in this practice of Doctor – of Mr Mthimkhulu what did the SCA say?

**MR MOLEFE:** The SCA concluded that Mr Montana's conduct was he was

party to the conduct of Mthimkhulu.

**ADV VAS SONI SC:** And as regards the entire process of Swifambo bidding but relying on Vossloh what did Francis J and the SCA find?

**MR MOLEFE:** The SCA found that Simfambo was actually fronting for Vossloho, because all that it had said to PRASA it could not do. But it is also so Chairperson because at the time when the award was granted they did not even have the subcontractor with their technical partner.

They did not have that envisaged technical partner was to be Vossloho. And I do need to say that in one meeting of myself and  
10 directors of PRASA where Swifambo had come to ask for the Board to support and approve, I think, an addendum.

There had been, you know, submitting various addenda because things were changing for them wanting more money and so on. I think this one was the third addendum. I had occasion in that meeting to ask them if at the time of procurement they already had Vossloho as their partner and they said:

“No no, we wanted first the tender to be awarded and  
after that we are going to tailor the subcontract we  
sign with Vossloho in line with what the award says,  
20 the contract that we sign with PRASA.”

Now that is putting the cart before the horse, because the award should not have been approved without demonstration of this capacity and the fact that they would have been a subcontractor already with a subcontract concluded. There was no subcontract concluded.

That is my addition, Chairperson, on this part. I am not quoting

the judgment.

**CHAIRPERSON:** You said a few minutes ago that the Supreme Court of Appeal, I think that is what you said, you might have been talking about the High Court judgment that they said that Mr Montana was party to Mr Mthimkhulu's conduct did I understand that correctly?

**MR MOLEFE:** That is so.

**CHAIRPERSON:** Now you have said, and I remember that it is in the judgment that the Supreme Court of Appeal Mr Mthimkhulu conducted himself in a dishonest manner.

10           Did you have any understanding whether the Supreme Court of Appeal saying Mr Montana was party to Mr Mthimkhulu's conduct whether it went to, it sought to say he was party to dishonest conduct as well or it may have simply meant that he was party to certain activities but not necessarily the dishonest part. So, I am just looking for your own understanding. Obviously one can misconstrue the judgment.

**MR MOLEFE:** Only I would be careful not to misconstrue the judgment but I understand that to the judgment the statement in the judgment to mean that Mr Montana's Aquest in the misconduct, the corrupt conduct of Mr, corrupt conduct of Mr Mthimkhulu.

20           **CHAIRPERSON:** Yes – yes, ja.

**MR MOLEFE:** We have tabled a number of things that have happened there are also some strange things that I am just throwing this in that has nothing to do with the judgment that Mr Montana did.

          Before my Board was appointed at PRASA it had happened that Mr Montana's contract had expired and had been renewed well which is

one of things he said to me when we had one on one that look I wanted to leave and they persuaded me not to leave and I agreed to the extension of this contract. That is when he was trying to convince me that I should accept that when his contract ends he would not stay.

But relating to this question what I want to raise Chairperson, in the course of our investigations and it is a document that I will submit to the Court, we established that similar to the conduct of Mthimkhulu, Mr Montana when he wanted a rise and extension, a rise in salary and an extension of his contract submitted a fake offer of employment.

10 A letter that was given by a company called Gypsum Fertilizers. Our investigations established that that company had ...[intervenes].

**CHAIRPERSON:** Never made an offer to him.

**MR MOLEFE:** Had – had not well the offer they were making is a kind of offer of a business that does not exist as a solid business. It is a – a what we, would call a newly registered company. It did not even have offices. The registered address was a house in Bedfordview and I think the evidence before The High Court would demonstrate that. So, what I am saying that the dishonesty that is being spoken of is not only about Mthimkhulu, you also had these instances where the Chief of  
20 Administrative Functions of the business was doing similar things.

**CHAIRPERSON:** Okay, thank you.

**ADV VAS SONI SC:** Finally, Mr Molefe at paragraph 66 you set out what the SCA said about Mr Montana, you read that into the record please.

**MR MOLEFE:** Chairperson the paragraph of the SCA judgment reads in this manner as follows:

“The SCA he controlled PRASA and his staff, was obstructive and attempted to cover up his role in various corrupt transactions including the award of the tender of Swifambo.”

Of course the Public Protector had experienced a similar obstruction in her investigation we referred to it earlier on in my evidence and it is detailed also in the Public Protectors Report.”

**ADV VAS SONI SC:** It would perhaps be an ideal opportunity now to look at the Public – what you say the Public Protectors Report is and you deal  
10 with that [intervenes].

**CHAIRPERSON:** Well before you do that Mr. Soni, well maybe allied to the question I put to Mr Molefe about his understanding of the Supreme Court of Appeal’s judgment in relation to Mr Montana’s conduct in relation with special reference to Mr Mthimkhulu’s conduct. I see that the quotation from the judgment in paragraph 66 of Mr Molefe’s affidavit does seem to suggest and I want to put the question to you because you would have applied your mind maybe better than I have in preparation for this. Whether that is your understanding, it seems whether the Supreme Court of Appeal is quoted to have said:

20 “Mr Montana’s controlled PRASA and its staff. Was obstructive and are attempted to cover up his role in various corrupt transactions including the award of the tender to Swifambo.”

Now that seems to suggest that he had a role in various corrupt transactions, but he sought to cover that. Is that your understanding of

what he has done?

**ADV VAS SONI SC:** It is absolutely. So Mr Chairperson, if I could go back to the question and maybe I should have seen that they are related, that although it did not expressly say so when it referred to Mr Montana had a role in Mr Mthimkhulu's contract, the passage that has been read at paragraph 34 makes that quite clear.

**CHAIRPERSON:** Yes, okay.

**ADV VAS SONI SC:** That is how I understand it.

**CHAIRPERSON:** Yes, okay. Thank you. You are ready to proceed to the  
10 Public Protectors Report?

**ADV VAS SONI SC:** We proceed with the Public, because it leads directly to it.

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

**ADV VAS SONI SC:** Now, Mr Molefe yesterday we were talking about ...[intervenes].

**CHAIRPERSON:** I am sorry, is my understanding correct that nobody has ever challenged that report in Court?

**ADV VAS SONI SC:** I was going to come to that Mr Chairperson.

**CHAIRPERSON:** Ja. Ja.

20 **ADV VAS SONI SC:** Mr Montana in 2015 filed an application to review the Public Protectors Report but it is matter I want to address through Mr Molefe ...[intervenes].

**CHAIRPERSON:** Yes. Okay.

**ADV VAS SONI SC:** Because that is of utmost significance and what I will through Mr Molefe point out is in a sense ...[intervenes].

**CHAIRPERSON:** The challenge was not pursued.

**ADV VAS SONI SC:** Well it – it is there but five years later we have the Public Protectors Report and we know what the Constitutional Court has said about the status of her Reports and you file a Review application which PRAJA says you must file within 180 days and five years later you do not bring it to fruition . But this the point I want to make through evidence through Mr Montana.

**CHAIRPERSON:** No that is fine but also what should be done is somebody should inspect the Court file and see what steps have been  
10 taken by whom since the launching of the applications. Or whether it was simply launched and no further steps were taken or whether some further steps were taken but there has been a problem of getting a date which on my knowledge of the Gauteng Division would be unlikely that somebody who may have been ready to have their date have done everything they are supposed to do that they would not have been given a date for five years or so. But somebody needs to go and check.

**ADV VAS SONI SC:** Indeed.

**CHAIRPERSON:** And maybe it will be useful to know what the state of affairs is, whether they are any further steps that Mr Montana has taken  
20 to try and have that Review application adjudicated.

**ADV VAS SONI SC:** Mr Chairperson, may I just point out, at the end of this when we make submissions to you at whatever stage, one of the points I will be taking is that the High Court has said that a Review is parented if it is not pursued, well firstly, if it is not instituted within reasonable time and there are at least two cases which we will refer to

which says if you have not prosecuted your Review.

So, you may have instituted it but you left it lying in Court the Review is like an appeal.

Your right to Review has been parented. But that does not detract from what you have said.

**CHAIRPERSON:** Yes, because it would just be important to know if there are any steps if there are any legitimate challenges in pursuing it. Because if there are no legitimate challenges in pursuing it and having it set down then one has got to look at what one makes of that.

10 **ADV VAS SONI SC:** Yes, yes, and – and as regards the status of that Mr Chairperson, may I refer to two passages from the Public Protectors Report, which are not in Mr Molefe's affidavit but which are relevant to the issues you have raised Mr Chairperson. Mr Molefe, Mr Chairperson perhaps for orientation the Public Protectors Report is in bundle C I think in your set of files. I have indicated to – to ...[intervenes].

**MR MOLEFE:** What is the page?

**CHAIRPERSON:** We will wait for you to tell. To give the page so before you give it to me.

**ADV VAS SONI SC:** The page number of the report itself,  
20 Mr Chairperson, is page 20.

**CHAIRPERSON:** I have – I have got page 20.

**ADV VAS SONI SC:** Oh, sorry Mr Chairperson, it is page 22.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Have you got it Mr Montana I mean Mr Molefe?

**MR MOLEFE:** I have got it, yes.

**ADV VAS SONI SC:** May I ask you took at paragraph xxii So, that is just before the first big number on page 22.

**CHAIRPERSON:** Yes. The one - Is it the one after saying careful? I have got a careful on the page.

**ADV VAS SONI SC:** Yes, sorry it is paragraph 21. Sorry, not paragraph 22. So it is XX(1). Would you please read that into record Mr Molefe?

**MR MOLEFE:** The paragraph reads as follow – as follows Chairperson:

10                    “What is encouraging is that both Mr Montana and  
the Board have welcomed to the provisional report  
which did not differ vastly from this final report and  
committed themselves to implementing the remedial  
actions once the report is made final. For this I am  
grateful and as such conduct is in line with the  
Constitutional ideal regarding the relationship  
between the Public Protector and Organs of State.  
As envisaged in section 181 of the Constitution.  
Section 181 of the constitution. Section 181 enjoins  
Organs of State to assist and to protect the Public  
20                    Protector and other institutions supporting  
constitutional democracy to ensure the effectiveness  
among other things.”

**ADV VAS SONI SC:** My I then also ask you to turn to page 64 and paragraph 3.6?

**CHAIRPERSON:** Is that page 64 at the bottom?

**ADV VAS SONI SC:** At the bottom. Sorry, yes Mr Chairperson. If you could read that – if you read that paragraph into the record Mr Molefe?

**CHAIRPERSON:** Which paragraph is it?

**ADV VAS SONI SC:** Paragraph 3.6

**CHAIRPERSON:** On mine that should be at page 65 and not 64. I thought you said 64.

**ADV VAS SONI SC:** It is 64 on my notes. Sorry Mr Chairperson.

**CHAIRPERSON:** Mr Molefe is it is 64 or 65 with you paragraph 3.6?

**MR MOLEFE:** Is it paragraph 3.5?

10 **ADV VAS SONI SC:** 3.6.

**MR MOLEFE:** Then 3.6 is on page 65 on my – in my file.

**CHAIRPERSON:** Yes. As you refer him to pages you will need to remember that you are one – you are one page behind.

**ADV VAS SONI SC:** I will need to confirm that. Yes.

**CHAIRPERSON:** You are one page behind.

**ADV VAS SONI SC:** So, would you read paragraph 3.6 on page 65 of the Public Protectors Report into the record Mr Molefe?

**MR MOLEFE:** Reads into the record.

20 “Mr Motana’s response to the provisional findings was however deeply encouraging. He said in pardon we quote: We confirm that PRASA welcomes the Provisional Report and the remedial actions recommended by the Public protector. PRASA views the remedial actions concerned as an essential tool to assist in improving its internal administrative and

financial controls. PRASA believes that the remedial actions will in future strengthen its governance framework operations and internal controls in ensuring that PRASA is safeguarded against irregular or unlawful conduct within its organisation.”

**ADV VAS SONI SC:** Mr Mofele I just placed that on record and then asked you to comment on the following. Mr Motana has filed an Application to Review the Public Protectors Report.

**CHAIRPERSON:** Of course, a lot of people say analytical files a Review Application to Review is the Court that reviews to have the report Reviewed and set aside by the Court. No, but that is just a technical thing.

**ADV VAS SONI SC:** No, no but an important one.

**CHAIRPERSON:** Yes, yes.

**ADV VAS SONI SC:** I am just placing on record that to the extent that that Review has any substance the Public Protectors Report will have to be considered in the light of the fact that there is that review, you understand?

**MR MOLEFE:** I do understand Chairperson, but in the light of what we have read in the Public Protectors Report are scribed to the response of Mr Motana and the Board of Control. The old Board of Control because it was not my Board that responded. I think Mr Motana has got a very difficult task because he first have to get what he responded to the Public Protector on out of the way to justify and reviewing it because he has accepted it. Now it is difficult, I think he has got a difficulty but maybe

well lawyers know how to go around these things but as a lay person I think he has a very serious difficulty.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** So let us start with the findings that you highlight in your affidavit and let us start with what you say at paragraph 68 [intervenes].

**CHAIRPERSON:** We are back in the bundle that has Mr Molefe's affidavit now?

**ADV VAS SONI SC:** Oh, sorry Mr Chairperson it is SS(6).

10 **CHAIRPERSON:** Ja I have got it in front of me. Okay we have gone beyond. Yes, okay alright.

**ADV VAS SONI SC:** Sorry, Mr Chair.

**CHAIRPERSON:** I think you might need to repeat your question.

**ADV VAS SONI SC:** Yes. In paragraph 68 you referred to or you highlight one of the findings made in relation to the tender for two train stations valued at 1.95 billion rand.

**MR MOLEFE:** I – I do so Chairperson perhaps to provide a little context. The context is that at a certain point and before 2010 South-Africa was awarded the status of hosting the [intervenes].

20 **CHAIRPERSON:** Soccer World Cup.

**MR MOLEFE:** Firstly, there was the one for Africa Wealth and then later the Soccer World Cup that was coming in 2010, and PRASA being an organisation responsible for transporting many ordinary people became part of that process by it had to improve the stations and do maintenance and allow for access to those stations by those who would be wanting to

attend the World Cup.

So, therefore this contract was then issued as I understand it and the – the – the contract entails doing work. You know we refer to two train stations and was later extended to seven stations. But this is also because it would seem like management and perhaps Mr Montana had the head- Mr Montana himself that they did not think that when you have issued a contract, you cannot in the course of execution of that contract, willy nilly change the scope to put more work- scope of work and more cost to the contract. And this what the Public Protector found.

10 **ADV VAS SONI SC:** Who was- do you know who the contractor was in this matter?

**MR MOLEFE:** The contractor in this matter was Siyangena which we- the company we referred to earlier on in my evidence.

**ADV VAS SONI SC:** Mr Chairperson may I for your benefit especially that appears at 359 of the Public Protectors report at page 359.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** With all those details set out in paragraph 68.

**CHAIRPERSON:** Okay, thank you.

20 **ADV VAS SONI SC:** Then Mr Molefe may I ask you to set out what you say in paragraph 69 of your affidavit which is SS6 in relation to the way Mr Montana ran PRASA or provide her with information.

**MR MOLEFE:** The Public Protector found that Mr Montana had approached her or the institution to say that he is finding it difficult to get information from PRASA. With this being and may- I think we, they approach here is not correct. Let me go to the actual thing ...

(intervenes)

**CHAIRPERSON:** You can read ... (intervenes)

**MR MOLEFE:** Because I think the prefacing is confusing.

**CHAIRPERSON:** You can read the ... (intervenes)

**MR MOLEFE:** The prefacing is confusing.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** The Public Protector says it was difficult to get information from PRASA. With this being the main causer factor for the delay in the finalisation of the investigations and the report where the investigations  
10 that had started in 2012. The Public Protector says promises for documents were made but they were not kept. Request for assistance from the board also yielded nothing and I must state here that it was the old board, not the board that I was chairman of. So source documents could not be made available.

Now just an add lipping of some kind, the contract of Siyangena was continuing at that time. It could not be true that PRASA did not know where to find the source document of a contract that is continuing and for which they were continuing to pay. So, but that is what they said. But the Public Protector also finds that Mr Montana boasted that you see they  
20 went and complained about me, now they cannot produce documents by way of evidence. And request the Public protector to find in his favour because he believes that those accusing him do not have- the accusations were baseless.

Now the company withholds document which would disprove what the complainant says even did they were wrong. But the company does

not release them and Mr Montana according to the Public Protector boast, he says, look I am innocent. Find in my favour.

**ADV VAS SONI SC:** Sorry Chair, can I just deal with that issue with a few questions? As far as PRASA status in our constitution dispensation go, what would PRASA be? Would it be a private body, an organ of state?

**MR MOLEFE:** Earlier on in my affidavit Chairperson I state that PRASA is an organ of state to that extend PRASA is obliged to comply with legal-  
the legal and constitutional framework of South Africa. In the earlier  
discussion in the course of this evidence where the Public Protector when  
10 she expresses her appreciation for Mr Montana and the board of that time  
saying that they welcome the report and the remedial actions required  
and that in their view it would assist to improve the governance in the  
organisation clearly means that they understood that they needed to  
support the work of the Public Protector. They were actually obliged to  
do so.

**ADV VAS SONI SC:** Mr Molefe before we go on to the next matter raised in your affidavit, may I ask you to please again turn to page 20 of the Public Protectors report now. If it may well be 21 in your copy.

**CHAIRPERSON:** Just mention again for the record the bundle number.

20 **ADV VAS SONI SC:** It is bundle C Mr Chairperson.

**CHAIRPERSON:** It is bundle C.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** But I do not know whether that your own one is also marked bundle C. It should be but you seem to not to be sure earlier on.

**ADV VAS SONI SC:** It is not- mine is not- ours has been marked

differently Mr Chairperson.

**CHAIRPERSON:** Oh, but they need to be marked in the same way so that we are all on the same page.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** So, when you need to tell me and the witness what bundle you are sure that it would be the correct bundle that we have.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** But it is Bundle C on mine.

**ADV VAS SONI SC:** Yes.

10 **CHAIRPERSON:** Okay. And you said page 20?

**ADV VAS SONI SC:** It is either page 20 or 21.

**CHAIRPERSON:** You are one page behind is it?

**ADV VAS SONI SC:** I am one page behind. So, it is 20 on mine and probably 21 with you.

**CHAIRPERSON:** So, it will be 21 with me. Ja. Okay it should be 21 with your bundle Mr Molefe

**ADV VAS SONI SC:** Yes. And it is paragraph XVIII.

**CHAIRPERSON:** No, that is not on page 21. That is on page 20.

**ADV VAS SONI SC:** Oh sorry.

20 **CHAIRPERSON:** On mine. Mr Molefe, is it on page 21 ... (intervenes)

**MR MOLEFE:** Mine is also on page 20, yes.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** So this is where I was coincide.

**CHAIRPERSON:** Yes. No, but I think it is important that all your bundles all your documents should be marked paginated exactly the same ...

(intervenes)

**ADV VAS SONI SC:** Exactly the same.

**CHAIRPERSON:** As ours and they should be marked exactly the same so that we do not have this problem.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Okay alright. Page 20 XVIII. Yes.

**ADV VAS SONI SC:** Can you please- so remember you were talking about Mr Montana boasting that they could not produce- the complainants could not produce documents. I would just like you to read paragraph 18  
10 where the Public Protector comments on this approach.

**MR MOLEFE:** The Public Protector states;

I must record that the investigation team and I had immense difficulty piecing together the truth as information had to be clawed out of PRASA management. When information was eventually provided it came in drips and drabs and was incomplete. Despite the fact that the means used to obtain information and documents from PRASA included a subpoena issued in terms of Section 7 (4) of the Public Protector Act, many of the documents and information requested are still  
20 outstanding. Until about 3 weeks before issuing the report PRASA was still being asked for outstanding documents and information on the contracts and some staff appointments.

I must say at this point Chairperson that at the time when the Public Protector report was being finalised I had also- my board of control had also been approached to assist in providing information to the Public

Protector and we actually had a meeting, two meetings or so in the offices of the Public Protector. I think the first one was on the 26<sup>th</sup> of June ... (intervenes)

**CHAIRPERSON:** 2015.

**MR MOLEFE:** 2015. 26 June 2015. And of course, Mr Montana was very unhappy that ... (intervenes)

**CHAIRPERSON:** You met with them.

**MR MOLEFE:** I went to meet with the Public Protector with other directors. We did request and the minutes of our meetings would record  
10 that we asked Mr Montana to comply with the request of the Public Protector.

**CHAIRPERSON:** Mm.

**MR MOLEFE:** At that time, we had also found that the subpoenas issued came through the office of the Group Chief Executive Officer Mr Montana. But to the extent that they effected members of his management team, they were not given to them. So, he wanted to be the sole person who is not only the custodian but the controller of what goes out and what does not go out.

**ADV VAS SONI SC:** And then may I ask you to please read paragraph  
20 XIX on the same page. It is the very next paragraph.

**CHAIRPERSON:** The same page. The same page where you were reading, the next paragraph, page 21.

**MR MOLEFE:** But what are we reading there? I do not have anything different from what I read earlier. Maybe paragraph.

**CHAIRPERSON:** I think Mr Soni ... (intervenes)

**MR MOLEFE:** But what I have here is paragraph 18 on page 20 maybe I must go ... (intervenes)

**ADV VAS SONI SC:** No, you have read paragraph 18. Can you now read paragraph 19 please.

**MR MOLEFE:** On which page?

**CHAIRPERSON:** The next page. Well on me- yours and mine seem to be the same. Paragraph 19 would be on page 21 ... (intervenes)

**MR MOLEFE:** Mine is on ... (intervenes)

**CHAIRPERSON:** 19 is XIX in terms of Roman figures.

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

**CHAIRPERSON:** It starts with, I must also indicate, is that right Mr Soni?

**ADV VAS SONI SC:** That is right.

**CHAIRPERSON:** I must also indicate.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Ja, that is the one he would like you to read.

**ADV VAS SONI SC:** Read that into the record.

**MR MOLEFE:** I must also indicate that the authenticity of many of the documents submitted by PRASA management as evidence principally relating to procurement is doubtful. Many of the memoranda for approval of tenders and related documents submitted by PRASA management were undated, unsigned and at least in one case incomplete. Examples in this regard include documents relating to the contracting of PSIRA Security, ARUP and a Enlightened Security Services. In some of these cases had this been an audit only a disclaimer would be a legitimate audit outcome.

20

Now Chairperson I did say that the Public Protector had expressed concern about the authentication of documents that they could not authenticate the documents and they were not being assisted by PRASA in a way of authenticating those documents.

**CHAIRPERSON:** Well you did say a few minutes ago that Mr Montana sought to control the incoming correspondence and what went out of PRASA to the Public Protector. And you made the point that to the extend that she needed to have communicated with his management team on some of the matters raised by the Public Protector or in correspondence-  
10 I think you referred to the subpoena. It looks like he did not do so, they were unaware.

So, I want to ask the question, where the Public Protector now says the PRASA management was submitting to her office documents whose authenticity was doubtful. And where she says many of the memoranda for approval of tenders and related documents submitted by PRASA management were undated, unsigned and at least in one case incomplete. Would that mean that although it says PRASA management in terms of your experience or understanding are you able to say that actually refers to Mr Montana because he was controlling correspondence  
20 that comes in and that goes out. Or are you not able to say whether he- that was the position or whether there were other members of the management team who may have been party to this?

**MR MOLEFE:** Chairperson I ... (intervenes)

**CHAIRPERSON:** You do not know.

**MR MOLEFE:** Restate, reiterate my statement that he was controlling

information.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** That he had not availed the subpoenas to the individuals mentioned.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Because the information from the Public Protector was channelled through the Group CEOs office. It was pretty clear to me when I met with the Public Protector in June 2015 that- well we became aware for the first time that there were these subpoenas. But when we  
10 went back the individuals mentioned had never heard anything about the subpoenas.

**CHAIRPERSON:** Okay, thank you.

**ADV VAS SONI SC:** Then may I just ask you Mr Molefe you have now read specifically what the Public Protector has said about the authenticity of documents, the incompleteness of documents and so on. Were you- are you surprised that that is how the PRASA management through Mr Montana dealt with the Public Protector's request?

**MR MOLEFE:** I am not surprised Chairperson. The earlier on in our engagement as the board of directors I indicated that in 2014 the  
20 November meeting we were advised that there was a probity report which was to give assurance to the board that procurement was done properly. It had not been there. And I subsequently indicated that the board had requested the contracts which had been concluded before it was appointed again this request was not honoured. So, I would not be surprised, it was a pattern of behaviour of the organisation- of the group

CEO.

**CHAIRPERSON:** Of course, as I understand the position, here the Public Protector is complaining that PRASA management and maybe we should read the Group CEO was not cooperating in furnishing information and documents to the Public Protector. But you also gave evidence either yesterday or the day before yesterday that your board soon after it had been appointed sort or asked Mr Montana to provide it with various contracts that had been concluded in regard to the modernisation program and that these were never provided. He never provided this to you. So,

10 is my understanding correct?

**MR MOLEFE:** That is correct.

**CHAIRPERSON:** Thank you.

**ADV VAS SONI SC:** And earlier you said that it seemed to reflect a pattern. Is that- would that be correct?

**MR MOLEFE:** That- I said so Chairperson.

**ADV VAS SONI SC:** Then if we could carry on with paragraph 69 of your affidavit Mr Molefe you talk about what the Public Protector found in relation to labour relations at PRASA. What did ... (intervenes)

**CHAIRPERSON:** I am sorry, did you move away Mr Soni from the page  
20 that- from our page 21? I do not know where ... (intervenes)

**ADV VAS SONI SC:** Oh sorry, I am going now to the affidavit again.  
Sorry Mr Chairperson.

**CHAIRPERSON:** Oh well before you go- you do so. Mr Molefe you see the paragraph that comes immediately after the paragraph you have read that is now in the Public Protectors report, page 21. There is the

paragraph 19 that you have read starting with, I must also indicate. Can you see that paragraph? Can you see that paragraph?

**MR MOLEFE**: I do see it Chairperson.

**CHAIRPERSON**: Yes. The one that comes after that which is paragraph 20, the Public Protector says something on which I think you should comment. She says; After unsuccessfully asking the new

PRASA board and its chairman to assist. I decided it would be in the public interest to proceed with the report and differ unanswered questions to second report.

10 Now that may or may not- that unsuccessfully that she uses, may or may not give the reader the impression that your board did also not cooperate in this regard. But maybe that is not what she means. Are you able to comment on that statement?

**MR MOLEFE**: Chairperson well reading it if you had not had other facts proving otherwise ... (intervenes)

**CHAIRPERSON**: Yes.

**MR MOLEFE**: Yes, it is a conclusion that one could draw but ... (intervenes)

**CHAIRPERSON**: But you may be able to comment and give context.

20 **MR MOLEFE**: But the context is that the board was asked on the 26<sup>th</sup> of July to assist. The board can only assist through its Group Chief Executive because the board does not keep records. And it was clear that the previous board and the Chief Executive did not cooperate even during our time they did not cooperate. For example, if you- maybe I should not go into the details but that is what it means. We offered to

cooperate but we could cooperate only to the extend that we can get information.

**CHAIRPERSON:** So therefore, it seem from what you say that it would be fair to say she is correct in saying after unsuccessfully asking the new PRASA board to assist that her attempts to get the board and its chairman to assist, that there are those that that request was unsuccessful. Those attempts were unsuccessful even in effect when she had asked the board to assist her. But what you are saying is, there was a reason for the board and its chairperson not being able to assist. And  
10 the reasons was that the board did not keep records. It is the Group- it is the management that keeps records and the Group CEO was not assisting the board. Is that right?

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

**CHAIRPERSON:** Yes.

**MR MOLEFE:** The- I understand that paragraph to mean that even as I had asked the new board to assist, that effort yielded no results. That is how I understand it and the result are directly linked to the need for cooperation by the Group CEO and his management team.

**CHAIRPERSON:** No, I think your- the meaning you attach to it is fair. It  
20 is correct. It is just that in the absence of the report saying anything else to the reason why even the board was not able to assist. And against the background of the lack of cooperation dealt with in previous paragraphs in relation to the Group CEO, the reader could get the impression that even Mr Molefe's board did not assist here. But you are giving the reason. You say as the board were committed to cooperating but you had

to ask management to do certain things and the Group CEO did not give-  
play his role, the role that you expected him to play.

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

**CHAIRPERSON**: Okay. Maybe one should ask what kind of time period  
are we talking about when this was happening? Was it at a time when the  
group CEO had already- oh he had already given his so-called letter of  
resignation. Or actually it was during the period which came after the  
board asked him to stay on for 6 months.

**MR MOLEFE**: That is correct.

10 **CHAIRPERSON**: So, he was somebody who was on his way out. I think  
that is one of the points you made.

**MR MOLEFE**: He was on his way out but he was still in office in charge.

**CHAIRPERSON**: Yes, but that might- could this be one of the reasons  
why the board decided that his continued presence in the company was  
not serving the purpose that the board wanted? Or not really?

**MR MOLEFE**: Whilst we would not have specifically said that about the  
Public Protector.

**CHAIRPERSON**: Yes.

20 **MR MOLEFE**: But we did say that increasing the board was finding it  
difficult to get information from the Group CEO. In fact, he was even  
beginning to give excuses for not being available for board committee  
meetings. So essentially behaving in a manner that made committees to  
some extent dysfunctional because the memoranda that committees  
consider have to be approved by the Group CEO.

So that was the problem that we were beginning to experience.

That coupled with other unbecoming behaviour which played itself out on the public domain, I did refer to the kind of statements regular attacks on the board of directors. It was then clear that we needed to ask him to go. So, it is a combination of all of those Chairperson.

**CHAIRPERSON:** Would I be right in saying while the purpose for which the board wanted him to continue for 6 months was to- or the primary purpose maybe I should say was to assist the board to get his replacement. That would have been on the assumption that he continues to perform the duties of Group CEO in the manner expected of him by the  
10 board.

**MR MOLEFE:** That is correct Chairperson except for those conditions which are articulated in my evidence yesterday.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Relating to further appointments of employees.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** And awards of contracts.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** And- ja. And of course, him serving on the boards of subsidiaries.

20 **CHAIRPERSON:** But basically, it must have been among the other things on the basis that he would continue to cooperate with the board. Because in order for the entity to operate properly there should be cooperation from the Group CEO with the board.

**MR MOLEFE:** That was at the heart of the decision of the board to allow him to serve the company for another 6 months Chairperson.

**CHAIRPERSON:** Thank you.

**ADV VAS SONI SC:** Mr Chairperson I perhaps should have dealt with that issue. The problem is I had consulted on that issue and based on what Mr Molefe said in evidence, it did not seem to me to be relevant. But you are absolutely right.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Looking at it objectively, that is a matter that should have been pursued.

**CHAIRPERSON:** Yes.

10 **ADV VAS SONI SC:** And I apologise.

**CHAIRPERSON:** No, that is fine. It just seems to me that you can only ask a Group CEO to continue for any proper purpose on the basis that he would cooperate with you as the board. If he does not cooperate with you then it does not look like there would be much purpose in wanting- the board wanting him to continue.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** So that is way I wanted to get the clarifications.

**ADV VAS SONI SC:** Then Mr Molefe if you go back to your affidavit that SS6 paragraph 69 regarding the labour practices or some of the unfair  
20 labour practice. What does the Public Protector says or say?

**MR MOLEFE:** The Public Protector Chairperson notes that or concludes that Mr Montana suspended employees without following procedure and that that conduct of habitually suspending employees contravened PRASA's disciplinary code. And constituted maladministration and improper conduct on the part of the Group CEO.

**CHAIRPERSON:** Well I see that the Public Protector said there was a conduct on the part of- of the Group CEO of habitually suspending employees and that might talk to the issue that I raised with you yesterday when I asked whether you recalled what numbers were involved in the suspension and dismissals of employees. You did say many, you could not remember the figure. You said many. But if the Public Protector says- talk about habitually suspending, it seems to suggest that there was a habit of suspending employees. So, it might be consistent with your recollection that it was many.

10 **MR MOLEFE:** It is correct sir, Chairperson. But it is consistent with the Deputy Judge President Chief Justice with what I said in my evidence. I can come this way a little bit and say, in fact some of the suspensions happened when I was on the board. There was suspension of the then Chief Information Officer, Mr Chris Mbata. And one of the managers in the legal function of PRASA Mr Fani Dingiswayo and the Head of that legal function Ms Martha Ngoye. There would have been others that I would immediately not know but those were the prominent ones who were suspended and this is a matter we dealt with at the board meeting held in  
20 in the manner in which he had done it. But also recognised that as a Group CEO he has the prerogative to discipline his subordinate.

But we insisted that he needed to follow process. Because what he did with some of these individuals he simply locked- told the security to lock them out, not to allow them to get into the premises of the company. And then having locked them out he then served them with

letters of suspension without following any due process. It is then true that of course the individuals came back and I think he did try to suspend them again but he was a man going out at that time.

**ADV VAS SONI SC:** Mr Molefe, the evidence that Ms Ngoye and Mr Dingiswayo will lead is not different from what you say is that in fact Mr Montana at the time you are talking about had dismissed them. They had approached you, you had approached Mr Montana. He reversed his decision to dismiss them but he summarily suspended them again and that suspension lasted until he left. Is that more or less your  
10 recollection?

**MR MOLEFE:** The facts are correct but I do not know what those witnesses are saying in their affidavits. I cannot say- I have not seen. But I accept that you having seen it, it corroborates what I have said.

**ADV VAS SONI SC:** Then in paragraph 70 of your affidavit you say there was a culture- well the DPP found something about the poor information management. What does she say about that? At paragraph 70 Mr Molefe.

**MR MOLEFE:** The Public Protector also noted that there was a culture of information- well it should be information mismanagement actually.

20 **ADV VAS SONI SC:** I think she says a culture of poor information,

**MR MOLEFE:** Oh, poor information management or hiding of information that could provide evidence of maladministration. And I concur with the findings of the Public Protector.

**ADV VAS SONI SC:** Now just in brief, the Public Protector prescribed a number of remedial actions which you briefly referred to in paragraph 71.

What were the more important remedial actions that she prescribed?

**MR MOLEFE:** Fundamentally the Public Protector Chairperson wanted action to be taken in respect of various remedial actions. One of them to restore proper administration within the company to investigate various contracts which reflected evidence of corruption to inform National Treasury of the report of the Public Protector and the findings. And that National Treasury was required to then go further to investigate contracts above 10 million from 2012. And then to take appropriate measures having done so in addressing the findings of the Public Protector. The  
10 Public Protector wanted also the board to deal with the misconduct of functionaries such as Mr Montana and others.

**ADV VAS SONI SC:** So, in regard to that- so let us just deal with each of them. In regard to the improper conduct of people like Mr Montana, did the board act on that?

**MR MOLEFE:** The board I should say Chairperson by the way if I remember very well the report of the Public Protector when it came out, Mr Montana had already left.

**ADV VAS SONI SC:** Yes.

**MR MOLEFE:** The only way in which the- well one of the ways in which  
20 the board could then address the concerns of the Public Protector to the extent that they are related to Mr Montana would have been then to deal with the unlawful contracts and investigate that in detail and that is then addressed in the applications that we made before the court. Because he was no longer under our authority, we could not discipline him. And with regard to Mr Mthimkhulu we had initiated disciplinary proceedings, of

course he then resigned at that point. In respect of the rest of the employees we secured the assistance the services of a firm of attorneys Huntley Mkhabela to deal with all labour related matters arising out of the Public Protector's report. At the time when I left PRASA that process was still continuing.

**ADV VAS SONI SC:** Just ... (intervenes)

**MR MOLEFE:** And I must say Chairperson that we regularly gave the Public Protector an update report on what we were doing about the remedial actions.

10 **ADV VAS SONI SC:** Just for the record Mr Molefe, at paragraph 65 you make the point that in 2015 your board took action against Mr Mthimkhulu but he resigned just as you had just said. I am just saying that it is contained here in your affidavit.

**MR MOLEFE:** It is correct Chairperson.

**ADV VAS SONI SC:** Alright. And then with regard to the National Treasury. The reporting matters to the National or supporting the National Treasury, did the board- participate in that process?

**MR MOLEFE:** The board did cooperate Chairperson but at the time of this report as I say the board had already taken steps to deal with issues  
20 of corruption. The company Werksmans- a firm of attorney Werksmans had already been appointed and they were busy investigating. In order to obviate to avoid duplication in the investigations I held a meeting with the Minister of Transport the Director General in that or Acting Director General in that department, the Chief Procurement Officer of National Treasury Mr Kenneth Brown.

At that meeting we agreed that all the investigations will be coordinated under the board of PRASA and that National Treasury would be informed about what PRASA was doing. Down the line of course because there were many many very many small contracts approximately 200 of these contracts. We then agreed to disaggregate them to separate them from those that PRASA had already started investigating and let National Treasury would deal- to deal with them. But the coordination continued in that regard.

**ADV VAS SONI SC:** Mr Molefe let us get to the next major issue that you  
10 raise in your affidavit namely the attempt of former President Jacob Zuma to intervene in regard to the board's acceptance of Mr Montana's so-called resignation. Will you explain how that came about please?

**MR MOLEFE:** Chairperson ... (intervenes)

**CHAIRPERSON:** I wonder- I am sorry Mr Molefe. I wonder whether we should start use the 5 minutes left before lunch or whether we should start it after lunch.

**ADV VAS SONI SC:** Yes. It- and I take your point Chairperson.

**CHAIRPERSON:** I am quite happy that we use the 5 minutes but it seems to be the kind of topic that you should rather start and take up to finish  
20 without interruption if possible. Is that fine with everybody?

**MR MOLEFE:** It is fine with me Chairperson.

**CHAIRPERSON:** Yes. Okay, let us take the lunch break. It is 12:55 and then we will resume at 2 o'clock.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us proceed.

**ADV VAS SONI SC:** As you please Mr Chairperson.

**CHAIRPERSON:** Thank you.

**ADV VAS SONI SC:** I am pleased to say my bundles have now going to be in accord with yours Mr Chairperson.

**CHAIRPERSON:** Oh that is good. That is good. Okay.

**ADV VAS SONI SC:** We are still at Bundle D, Annexure SS6 Mr  
10 Chairperson.

**CHAIRPERSON:** Yes and we – has this always been Bundle D?

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Oh okay alright. And you have got to start on the topic appearing at page 30 of Mr Molefe's – 20 of Mr Molefe's affidavit?

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

**CHAIRPERSON:** Ja. Okay.

**ADV VAS SONI SC:** Mr Molefe you deal in your affidavit with an attempt by former President Jacob Zuma to persuade the Board or persuade you to persuade the Board to reinstate Mr Montana. Would  
20 you tell us how this whole incident started – or the whole episode started?

**MR MOLEFE:** Chairperson yesterday I referred to a long meeting I held with Mr Montana in a small town in the Southern Cape called Knysna. I need to indicate something that is not in my affidavit but it is relevant to the topic that we are discussing now. Shortly after that meeting a

few days after that meeting with Mr Montana in Knysna and whilst I was still in Knysna I received a call from my secretary in PRASA advising me that they had received an email from the office of Mr Jeff Radebe which purports to be an email inviting me to a meeting with the President of the Republic of South Africa, Mr Jacob Zuma. I do in this – in the affidavit somewhere deal with what my attitude was to that email. The email I was advised was from a gmail address. At that point I said to my secretary tell them that we would not consider an email that requires me to go and meet with the President purporting to  
10 come from Minister in the Presidency yet it is not containing an official address. Tell them to issue an invitation properly.

**CHAIRPERSON:** At that time what was Minister Jeff Radebe's portfolio? He was Minister of what?

**MR MOLEFE:** I think he was – he was Minister in the Presidency.

**CHAIRPERSON:** In the Presidency.

**MR MOLEFE:** Ja, yes.

**CHAIRPERSON:** And the Minister of Transport was who at the time?

**MR MOLEFE:** The Minister of Transport was Ms Dipuo Peters.

**CHAIRPERSON:** Okay thank you.

20 **ADV VAS SONI SC:** Now before that ...

**MR MOLEFE:** We will later return to this issue about protocol which I raise later on because ideally...

**CHAIRPERSON:** Yes.

**MR MOLEFE:** The invitation should have come through my Minister.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** (Indistinct).

**CHAIRPERSON:** Well I wonder whether it is not the time to talk about it now.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Because you did say you want to mention this before you go into the discussion. Is it not the right time to talk about protocol? Do you think you want to deal with it later?

**MR MOLEFE:** The matter of protocol I deal with in the topic but further down.

10 **CHAIRPERSON:** Okay. Okay.

**MR MOLEFE:** In the topic (indistinct).

**CHAIRPERSON:** Alright.

**ADV VAS SONI SC:** Sorry Mr Molefe. The Chairperson is saying given what happened and your attitude towards protocol would it not be more appropriate to talk about it now and then we can leave it and we will not talk about it where it appears in your affidavit?

**CHAIRPERSON:** I think – I think Mr Molefe...

**MR MOLEFE:** My counsel used to say as it pleases My Lordship. I will deal with it now Mr Chairperson.

20 **CHAIRPERSON:** You – you know your statement – your affidavit obviously much more than I know it and if there is a particular reason why you think you – it would connect better with the story to deal with that later aspect later it is fine but I thought you do make the point that you said if you are inviting me to meet with the President do not use an unofficial email address, use an official email address. And I thought

that is part of insisting upon proper communication which might fit in with – well with the issue of protocol. But if you think look maybe the aspect you want to deal with further about protocol fits in better later that is fine.

**MR MOLEFE**: I will deal with it now Chairperson.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: Later on if I refer to it it will be merely for emphasis.

**CHAIRPERSON**: Okay. Okay no that is fine.

**MR MOLEFE**: So a few days later I – I then receive a message that the  
10 President would like to meet with me this time in Cape Town. This time the request came from the Presidency. I did not continue to insist on anything written. I...

**CHAIRPERSON**: It was telephonic message?

**MR MOLEFE**: It – I think it was telephonic message.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: To my office.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: And then I – I then rerouted my flight – my journey to go to Cape Town. The President did not meet me. I waited there forever.  
20 At about five or so late afternoon he said no, no let us meet another time maybe in Pretoria I cannot meet you today. So I went back and it was in April.

**CHAIRPERSON**: And the period would have been around about what month I assume in 2015?

**MR MOLEFE**: The period was in April.

**CHAIRPERSON:** Oh ja it was in April.

**MR MOLEFE:** Say April Chairperson it was shortly after the meeting that I had with Mr Montana.

**CHAIRPERSON:** Oh yes.

**MR MOLEFE:** Because I was still in Knysna.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** I had not yet gone back.

**CHAIRPERSON:** Okay. Okay. Okay.

**ADV VAS SONI SC:** Mr Molefe before you go on did you find it relevant  
10 that that request to – for you to meet the President came soon after the  
meeting with Mr Montana?

**MR MOLEFE:** At that time I did not really question anything relating to  
the request and I thought well if the President says come and meet me.  
But the subsequent events put one in a position of now connecting the  
dots. Especially because it comes shortly after my meeting with Mr  
Montana where he had what I call a litany of complaints. And then of  
course later on as we know the meeting is held in Pretoria.

**CHAIRPERSON:** And the – the email that had come from Mr Jeff  
Radebe on the basis of – through a gmail email address had it  
20 indicated what it is that the President wanted to meet with you about or  
had it not indicated that you took it that it might be PRASA issues?

**MR MOLEFE:** The email had said that he wants to discuss the affairs  
of PRASA.

**CHAIRPERSON:** Oh okay.

**MR MOLEFE:** Affairs of PRASA.

**CHAIRPERSON:** Yes. And the telephone conversation – message confirmed that or just said the President wanted to see you?

**MR MOLEFE:** The telephone message confirmed ...

**CHAIRPERSON:** That it was PRASA affairs.

**MR MOLEFE:** Yes it was about PRASA.

**CHAIRPERSON:** Okay alright.

**MR MOLEFE:** But I do – we spoke about protocol earlier on. I found it bizarre that although I met the Chairman of the Board reporting to a member of the executive cabinet Minister appointed by the President  
10 that when he wants to communicate he circumvent the – the office of the Minister and the Minister herself that it becomes direct.

**CHAIRPERSON:** Then the Minister gets involved also.

**MR MOLEFE:** The Minister is not getting involved in that regard.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** The – and it is a matter I raised because in the topic under discussion.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** At the meeting at that stage I did not even know that Mr Montana was going to be part of that meeting.

20 **CHAIRPERSON:** Hm.

**MR MOLEFE:** I said to the President, Mr President could you explain to me what is the nature of protocol that you apply? You have invited me to this meeting – it was a direct invitation to me and you have invited my Minister to the same meeting. Now I report to the Minister. Should you not rather have invited the Minister and say to the Minister,

I would like you to come with the Chairperson of the Board. He got very irate when I said that. He said, why are you asking me that question? Why are you asking me?

**CHAIRPERSON:** Hm.

**MR MOLEFE:** Well I have appointed her I can invite anybody I want to appoint.

**CHAIRPERSON:** hm.

**MR MOLEFE:** So that – so I said, well Mr President that is your prerogative we can leave the subject. Ja and it is similar to this one.

10 The one of the gmail he – what is worrisome is that it comes across as something done by a person who when some difficult issues might arise – arising out of – arising – might arise as a result of a meeting requested by gmail you would say but the gmail is not mine. I do not know if that would have been sustainable but it is – it – the meeting could easily have ended as an informal affair. Yet the subject for discussion would have been PRASA. And I could have said look this really it is about us as comrades which you will see Chairperson with regard to the meeting of the 20 August also. It was convened as – it is called by the President. The President to the guest house of the  
20 Presidency but we now talk about the ANC but we talk about matters that the Board of Directors had decided upon and we purport to review the decisions of that Board in a meeting. That is fundamentally a meeting of the party.

**ADV VAS SONI SC:** May I ask you two questions relating to firstly the invitation from Mr Jeff Radebe. Did you know Mr Jeff Radebe prior to

that meeting or prior to the communication to you?

**MR MOLEFE:** I – I knew Mr Jeff Radebe Chairperson. I spent a bit of time with him on Robben Island as well and I served with him on the National Executive Committee of the African National Congress until the conference of Polokwane of 2007. I had been serving with him for about 16 years on the MEC. So – and I knew him also from many activities of the party. He was made Head of Policy in the party so policy discussions and plans for elections all resorted under him.

**CHAIRPERSON:** Hm. Okay.

10 **ADV VAS SONI SC:** And former President Jacob Zuma did you know him?

**MR MOLEFE:** I – I knew President Jacob Zuma Chairperson. He too I served with him on the National Executive Committee of the African National Congress since 1991 until at the time when we went through the conference of 2007. Of course at that time he had already been asked to resign – he had been asked by President Mbeki to step aside as the Deputy President of the country but he remained the Deputy President of the party because that is an elected position by a party conference where he could not be removed.

20 **ADV VAS SONI SC:** Now when you said that the invitation from Mr Radebe had come via a private gmail address I understood you say – you said that that was worrisome. What worried you? I mean you knew about the (indistinct) persons why would you be worried that you had been called via a private email?

**MR MOLEFE:** I was worried that we are ostensibly going to discuss the

affairs of a state – an organ of state which report to another Minister. But I am being invited in a very informal way of a gmail and my concern was that this cannot be really a proper meeting and that is why I insisted that a formal invitation be sent. And it should have been easy to send that invitation on a government address and it was not done.

**ADV VAS SONI SC:** Of course there was this difficulty that as you point out you are a reportee to the Minister of Transport and it would be out of protocol for the President to supersede her and make the invitation to you. That is how I understood you to be concerned.

10 **MR MOLEFE:** Yes I am saying so but you know people sometimes just ignore protocols. But it is something that is not conventional and I would have expected him to communicate through the Minister. But Chairperson as we go along I think it is important for us to separate between the meeting of the 20 August and – and the meeting of the one that was requested in April.

**CHAIRPERSON:** Oh yes.

**MR MOLEFE:** Because they follow different.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Methods altogether.

20 **CHAIRPERSON:** Yes. Ja.

**MR MOLEFE:** The one...

**CHAIRPERSON:** And the one that you have been talking about was for April?

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

**CHAIRPERSON:** Yes. Ultimately it did not happen in April?

**MR MOLEFE:** It did not happen – I flew to Cape Town but the meeting did not happen.

**CHAIRPERSON:** Yes. You availed yourself for the Cape Town one and it did not happen. Is that right?

**MR MOLEFE:** May the Chair please repeat the question?

**CHAIRPERSON:** You availed yourself for a meeting in Cape Town.

**MR MOLEFE:** I did avail myself Chairperson. I did.

**CHAIRPERSON:** But the meeting did not happen.

**MR MOLEFE:** Did not happen.

10 **CHAIRPERSON:** Ja okay.

**ADV VAS SONI SC:** Alright so that meeting did not take place in April. Did something happen later on again about a meeting?

**MR MOLEFE:** The picture that had happened the context was that Mr Montana had said he was leaving. We had released him and he engaged in all these activities which resulted in us saying to him, well your stay in the company does not serve the purpose for which you were asked to stay in the company so go now. So (indistinct) that we had allowed him to go at that time. And of course at that point in time after we had allowed to go he had started making public statements  
20 saying that he – if the government requires him to return he is willing to return as a Group CEO of PRASA. But the conditions for his return must be that the existing board must be dissolved, it must go, he will not work with that board. He would not work with my board. So a lot of publicity was given to this matter. In the interim I must say that the Minister also begins to say, but you did not consult me properly before

you released the Group CEO. But he resigned and I – he said he does not want an extension of the contract. So the Minister keeps saying that – and they start – beginning to say what Mr Montana was saying. He says, I am the best person for the job. I am the GCE. I have been trained in matters of rail and public transportation you know. I know this job so the country needs me. So the Minister says that and we say we have taken a decision and there is now no going back on that decision. It was clear to me that the Minister at that point was beginning to get pressures from other quarters to try and get us to  
10 review our decision or to get it reversed. She raised a number of issues about starting to talk about the performance of the business – this and that he asked for a report. There is a substantive report that I wrote on behalf of the Board in response to some of the issues that the Minister was raising and that report is available should the Chairperson read it.

**CHAIRPERSON:** It would be good to get it because as I read your affidavit one of the things that seemed to be quite unexpected for me is that at a certain stage or before the Minister – Minister Dipuo Peters left the Portfolio it seems her attitude towards your Board may have  
20 changed. I – I have got the impression for quite some time in your affidavit that he seemed – she seemed to have the – been very positive towards your Board and supportive. But that from a certain time before she left the Portfolio she seemed to have had a different attitude. I may be misreading you affidavit but I seemed to pick that up.

**MR MOLEFE:** The assessment is correct Chairperson.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** I need to – to also say because I think we may – with – may well also draw some connection with the ultimate dismissal of the Minister herself. The – I do refer to this matter in my affidavit that there were concerted efforts to discredit the investigators we had appointed. And one of those ways to – to undermine that was to suggest that they should have been vetted by state security agency – the State Security Agency. We were going to be the first state owned company when it appoints professionals to provide professional  
10 services they have to be vetted by State Security Agency. So the President asked the Minister to tell me that – to explain whether they were vetted by State Security Agency. When the Minister came to me I dismissed it because it was a very strange approach and I said, as PRASA we are not a government department where somebody could say we would be privy to classified information of the state – of the cabinet or the government and to that extent such classified information would not be safe in the hands of the Board or our investigators unless they were vetted. So – so I killed that argument at that point in time demonstrating that there have been several appointments of service  
20 providers in range of public institutions, companies, and state owned companies. Not once to my knowledge had they been required to be – to avail their professional considered for appointment to be vetted by them. And my view was that this professional organisations they have got their own Board or institutions which make decisions on whether they are worthy of being in that profession and we left it there. So

there was this concern. Now – but I do not want to go into details.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** About that.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** If you want to return to the topic with the former President meeting of August.

**ADV VAS SONI SC:** Yes. But before we get to that I just want us to...

**CHAIRPERSON:** Remember to raise your voice.

**ADV VAS SONI SC:** Oh sorry Chairperson.

10 **CHAIRPERSON:** I think you do move away so whereas your voice is soft by nature so okay try and raise it.

**ADV VAS SONI SC:** You – as you please Chairperson. Mr Molefe I just would like us to have attention to the timeline. The question of the investigators obviously comes in after Mr Montana has left because that is when they – they are – are appointed.

**MR MOLEFE:** That is correct.

**ADV VAS SONI SC:** And I just want you to keep this in mind because I want to ask you questions about it later. It seems to me that you say that the Minister even before your meeting in August that the President  
20 had already asked you – had already suggested that maybe the decision to accept Mr Montana's parting of ways with you were – should be revisited. Am I right that that issue between you and the Minister came before the meeting with the President?

**MR MOLEFE:** That is correct.

**ADV VAS SONI SC:** Now just keep that in mind. So that would be

before August 2015?

**MR MOLEFE**: That is correct.

**ADV VAS SONI SC**: Alright. The investigations come afterwards.

Now...

**MR MOLEFE**: No the investigations do not come after August 20<sup>th</sup>.

The investigation has started slightly earlier than that because even at that point in time the Public Protector's Report was out and I do indicate the comment that the Minister made at that meeting about the fact that the Board was investigating.

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

**CHAIRPERSON**: When Mr Montana left I think you said yesterday on the 15 July 2015, is that right?

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

**CHAIRPERSON**: Yes. So Werkmans would have started ...

**MR MOLEFE**: Shortly after that.

**CHAIRPERSON**: Shortly after that ja but before the meeting of 30 August.

**MR MOLEFE**: Before the meeting with the President.

**CHAIRPERSON**: Okay.

20 **ADV VAS SONI SC**: Now later in your affidavit and I just want us to stick to timelines so that we know whether reasons given for certain decisions are proper reasons. When Mr Montana left the Minister and soon thereafter the Minister as I understand your affidavit did not raise questions about the appointment of the – of the forensic investigators. Or am I wrong about that?

**MR MOLEFE:** You – the Counsel is correct Chairperson she did not. In fact we have meetings with the Minister informing her about what the Board was doing. One of those meetings was held at the – what is now known as the OR Tambo International Airport in the VIP lounge in the Board there. But several others have taken place between me and the investigators and the Minister. Because as new things were emerging we wanted the Minister to understand what is – what was emerging from the investigations?

**CHAIRPERSON:** And she had no – at that stage she expressed no  
10 difficulty with the (indistinct).

**MR MOLEFE:** She had no objection.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** To the investigation.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** I did say also that earlier on in my evidence today Chairperson that after the ...[indistinct] in the context in which PRASA had already begun its own investigations the question arose of how do you then coordinate action related to the remedial where actions are required by ...[intervenes]

20 **CHAIRPERSON:** The implementation of the ...[intervenes]

**MR MOLEFE:** The implementation of the ...[intervenes]

**CHAIRPERSON:** Remedial action.

**MR MOLEFE:** Remedial actions of the Public Protector and it is at a meeting with the Minister, the Director General of the Department of Transport and the Chief Procurement Officer of National Treasury, Mr

Kenneth Browne, that we then agreed that there needed to be coordination but coordination will be under the Board of Trans – PRASA sorry.

**CHAIRPERSON:** Mmm, mmm, okay.

**ADV VAS SONI SC:** I wanted again to keep the timelines Mr Molefe, a little earlier you said that the President had asked the Minister if the investigators had been checked by the State Security Agency.

**MR MOLEFE:** I did say so Chairperson and that happened before the meeting of the 20<sup>th</sup> of August.

10 **CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Before the meeting of the 20<sup>th</sup> of August?

**MR MOLEFE:** I think so, *ja*.

**ADV VAS SONI SC:** Okay, okay, so that means the question of the investigations was one of the matters that in a sense preceded the meeting of the 20<sup>th</sup>?

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

**ADV VAS SONI SC:** Now did the Minister tell you that it was the President who had asked if the forensic investigators had been scrutinised.

20 **MR MOLEFE:** She did Chairperson.

**CHAIRPERSON:** Did you find it odd that such an enquiry came from the President or you didn't know if it was usual or not usual, you just responded?

**MR MOLEFE:** Certainly Chairperson I found it odd because why when we were just beginning to investigate that the President should be

concerned about the firm who ...[indistinct] that he is investigating when in fact such a question never arose about very many other investigation what had happened in respect of public, affecting public enterprises of government owned companies, State owned companied, let me put it that way.

**CHAIRPERSON:** I understood you to say the Minister also raised the issue of the ...[indistinct] to the extent that you may have said that was that connected with simply her conveying to you what the President had raised or was she also raising it of her own accord.

10 **MR MOLEFE:** She – I think it was connected with what the President had raised with her because had it happened out of her own accord she would have raised it ...[intervenes]

**CHAIRPERSON:** Much earlier.

**MR MOLEFE:** Much earlier as we were implementing the remedial actions of the Public Protector and the findings, investigating the findings of the Auditor General, she did not raise it. In fact in the same meeting where she raises it she says the President wants to know if this firm has been vetted.

**CHAIRPERSON:** Oh so to the extent that I may have understood you  
20 to say the Minister raised the issue is not a separate occasion, it is the occasion when she said the President has raised this issue.

**MR MOLEFE:** That is correct.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** And what was your response to that?

**MR MOLEFE:** I attempted to respond to that and say that I challenged

the basis upon which a firm of professionals investigating on behalf of PRASA outside Government Department needed to be vetted by State Security Agency, and I did say that there is no basis because when you do this vetting of this institution and you get State Security Agency to do it one would expect that they are doing it because there is fear that if they don't do it classified information of the cabinet and the government could go into the hands of people who are not sworn to secrecy or confidentiality.

**CHAIRPERSON:** Mr Soni he is giving this answer for a second time,  
10 he has given it before.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Yes, so I just want to say ...[intervenes]

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

**CHAIRPERSON:** ...you must keep an eye on that.

**ADV VAS SONI SC:** And I had the same difficulty as you Mr Chairman, I didn't know if it was the same occasion.

**CHAIRPERSON:** Oh, okay, okay, okay.

**ADV VAS SONI SC:** Now what was the Minister's reaction to that when you said this that look I am surprised you are asking me, I am  
20 surprised the President has asked. In other words did she accept it or was she resisting your explanation?

**MR MOLEFE:** Well I believe that the Minister accepted because she had no argument against what I said and if she disagreed with me she would have had to present a rational case for disagreeing with me and she did not do so.

**CHAIRPERSON:** Now I get the impression that in your exchange with the Minister it seems that she was just conveying what the President had raised, is that a fair impression?

**MR MOLEFE:** It is not my intention – well she was conveying what the President said but also what she presented as her concern as well, but the meeting was not about that only.

**CHAIRPERSON:** Yes, okay, no that's fine.

**ADV VAS SONI SC:** Now after the attempt, the meeting that didn't take place in April in Cape Town, we now have the meeting in August,  
10 how did that meeting now come about?

**MR MOLEFE:** The meeting in August ...[intervenes]

**CHAIRPERSON:** Now August 20?

**MR MOLEFE:** In August 20 yes, is now convened again by the Minister in the Presidency. This time they informed the Minister and they had told her that they had invited me because I also get a separate invitation but the Minister came to me to say the President wants to see us at three o'clock on the 20<sup>th</sup> of August at the President's Guesthouse.

**CHAIRPERSON:** And this time too there was an indication that it was about PRASA?

20 **MR MOLEFE:** It was an indication about PRASA. In fact it was about PRASA.

**CHAIRPERSON:** And just before Mr Soni has another question, as at that time how was the relationship between the Minister and the Board as at that time when she told you about the meeting that had to take place on the 20<sup>th</sup>?

**MR MOLEFE:** The relationship at that time between the Board and the Minister appeared to still be normal, but of course there was a behaviour that was strange and that behaviour comes out when we deal with the appointment, the need to appoint a Group CEO, so we start seeing this what appears to be resistance but the Minister not saying to us I will not do it, I actually says to me thank you very much for the work you have done, I am going to, I have to talk to the President about your intention to appoint the GCE, I am not going to change anything, I am going to present as it came from the Board of Directors.

10 **CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Right, so the meeting is scheduled for three o'clock on the 20<sup>th</sup>, am I right?

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

**ADV VAS SONI SC:** Did the meeting start as scheduled?

**MR MOLEFE:** The meeting Chairperson started three hours late, I started at about six pm, actually when – at about that time I had started saying to the Minister if that is how you are treated in the cabinet but the president can ask for a meeting with you and the President makes you wait for more than two hours, close on to three hours and he  
20 doesn't say anything about what is happening, why is keeping you waiting.

I am not prepared to sit here indefinitely and of course that time I had a bit of flu, and I said to the Minister you stay I am going to go home now, and of course it was at that point in time as I was going out that I met with the President in the passage, and I said to him Mr

President as you see him, I was actually going home, because he asked for a meeting at three o'clock and you're not there, you are not giving us any apology. Of course before that I had been advised that Mr Montana was seen in the premise coming out of one of the rooms with Mr Roy Moodley and I think they had been talking to the President before I met him in the passage.

What they were discussing I don't know.

**CHAIRPERSON:** During the time between three o'clock to about the time when you saw the President had you and the Minister been  
10 informed what the reason for the delay was, like maybe the President was not in the premises or at any meetings, had you been informed of anything like that?

**MR MOLEFE:** We were given conflicting information, he said no he is flying from Cape Town and then they would say he has landed, say maybe an hour and a half later or so, but he was not arriving at the meeting that he had requested, and we were not being given an explanation, why this long delay.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Now you then meet the President and you  
20 indicate you were going to be leaving, what was his reaction to that?

**MR MOLEFE:** His reaction was that but you know I told them to tell you that I am in Cape Town, ja you might have been in Cape Town and I knew you would be in Cape Town, but you set up a meeting of three o'clock Mr President knowing that you would be in Cape Town on that day, we would have at least expected that somebody should have

notified us that you would be late, and then he said well now I am here, and let us go back, let us go to the room and let's go and meet.

**CHAIRPERSON:** Where was this meeting again?

**MR MOLEFE:** The meeting was at the Presidential Guesthouse in Pretoria.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Now as I understand your affidavit four people were present at this meeting on the 20<sup>th</sup> of August, that's you, Minister Dipoa Peters, former President Zuma and Minister Jeff  
10 Radebe, or were there other people there as well?

**MR MOLEFE:** Initially that was what we understand, we understood to be the individuals who are going to be participants in that meeting, but of course later on it turned out that Mr Montana, who happened to ...[indistinct] by the Board of Directors of PRASA had also been invited into the meeting, to the meeting. We did not know anything about that.

The Minister and I did not even know what would be the details of our discussions save that they wanted to discuss PRASA. Now there are formal ways in which reports are given to the Minister and/or the Government because the Board gives quarterly reports about the work  
20 of the company and its performance in accordance with the key performance indicators and key performance areas identified and these would have been identified in the Board's Charter informed of course by the mandate of the company also and they operate a corporate plan of the company. We would give *ad hoc* reports if there are things that the Minister needs to know about and they happen in between the quarterly

report, so this one we didn't know what its focus was going to be.

**ADV VAS SONI SC:** As I understand now the four of you were there at the commencement of the meeting and Mr Montana joined a little later.

**MR MOLEFE:** That is correct Mr Montana joined but let me say that prior to that meeting, I want to draw our attention to this again Chairperson, Mr Montana had started making public statements announcing that he is willing to return to ...[indistinct] PRASA if the Minister required him to do so, or the Minister and the Board required him to do so. He walked away, we tried to persuade him to say, now

10 suddenly he says he wants to return and then publically, on a public platform he wants to return conditional upon him serving under a different Board of Directors and at that time also the environment was – contained a lot of other campaigns by groupings I refer to a person called Stephen Sangwene, who was mobilising, he called himself – he said he was the President of a thing called Commuters Association but of course you can't say who is a member of that organisation, but he was the President and was being given money for that and was mobilising unemployed youth in the townships and of course they said it's good because he can use them to protect the trains, to patrol the

20 railway tracks and so on. That so-called commuter association would then issue public statements saying that they want Mr Montana to return, that if he doesn't return we should know that you know there will be no stability.

Of course in preceding meetings between Mr Sangwene and one of my directors, Ms Mklala, because I could not attend that

meeting, he openly said that if you don't bring Mr Montana back your trains are going to burn. Well we made no big deal of that but I am saying this to demonstrate how the environment was polluted already and then you have of course this SATAWU of Mr Zanzo Mhlangu also issuing public statement in that regard.

**CHAIRPERSON:** Now I wanted to ask you this earlier, you have said from time to time that at a certain stage Mr Montana began to issue public statements in some of which, as I understood your evidence, but you must correct me if I am wrong, he seemed to attack the Board and  
10 to attack you. I want to find out whether that began before the Board asked him to leave on the 15<sup>th</sup> of July or that happened after he had left, after the 15<sup>th</sup> of July?

**MR MOLEFE:** It began before the Board asked him to leave, if that is before the 15<sup>th</sup> of July Chairperson, and in fact I must say that in one of the publications there was a very expensive article, again that was in the Financial Mail, which kind of article the Financial Mail would not publish unless it was paid for, several pages which we asked Mr Montana to explain and he confirmed that he said the thing that were being said in that article.

20 **CHAIRPERSON:** And this was now, this article was published before the 15<sup>th</sup> of July?

**MR MOLEFE:** It was before the 15<sup>th</sup> of July, the rest of July we had no relationship with Mr Montana really, we would have no basis to hold him accountable to PRASA.

**CHAIRPERSON:** Yes, yes. So but these attacks by him in the media

on the Board and the various statements did they occur between the 31<sup>st</sup> March, ...[indistinct] between the 31<sup>st</sup> of March and the 15<sup>th</sup> and maybe continued beyond or did they start even before the 31<sup>st</sup> of March when his contract ...[intervenes]

**MR MOLEFE:** They did not start before the 31<sup>st</sup> of March Chairperson, they started after.

**CHAIRPERSON:** After okay. And did they continue ...[intervenes]

**MR MOLEFE:** They continued, they continued, I mean in the latter period ...[intervenes]

10 **CHAIRPERSON:** Yes, yes, became more ...[intervenes]

**MR MOLEFE:** ...they manifested themselves in social media, Twitters and Facebook and so on, but it was continuing.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** This ...[indistinct] Mr Montana's letter to you is dated the 15<sup>th</sup> of March as I understand it, telling you that he is going to leave at the end of March but would serve a six month period of notice.

**MR MOLEFE:** Well I would imagine ...[intervenes]

**CHAIRPERSON:** Yes we looked at that ...[intervenes]

20 **MR MOLEFE:** ...because I can't – I was not looking ...[intervenes]

**CHAIRPERSON:** Yes, we looked at that.

**MR MOLEFE:** ...but I know it was in March, it was before the 21<sup>st</sup> ...[intervenes]

**ADV VAS SONI SC:** I am trying to get to something Mr Molefe. You accept on the 1<sup>st</sup> of April that is your letter to Mr Montana.

**MR MOLEFE:** That is correct.

**ADV VAS SONI SC:** That we accept and the six month period is conditional upon our not finding somebody as a replacement for you. That's what your letter to him of the 1<sup>st</sup> of April said.

**MR MOLEFE:** That is correct.

**ADV VAS SONI SC:** Now I am just taking up a theme raised by the Chairperson as to the time when this started, the accumulations by Mr Montana against you and the Board, did it start soon after you accepted his resignation?

10 **MR MOLEFE:** That is correct Chairperson, it started soon after that and soon after we had imposed those restrictions on him and after we asked him to withdraw as the Chairperson of the Boards of Subsidiaries.

**ADV VAS SONI SC:** Coming back now to the meeting when you heard that Mr Montana and Mr Moodley had left the meeting room what was your reaction to that?

**MR MOLEFE:** Well Chairperson I was, I was surprised that they would have had the opportunity to meet with the President and given preference to the Minister and the Chairman of the Board of PRASA,  
20 and him actually having no standing in PRASA anymore because he had left.

**CHAIRPERSON:** Of course I take it that you thought along those lines only because you took it that the discussion that the President might have had with them related to PRASA.

**MR MOLEFE:** That is true Chair and I would not have known and I

don't know much about what ...[intervenes]

**CHAIRPERSON:** Yes, what they discussed.

**MR MOLEFE:** ...they would have been discussing now.

**CHAIRPERSON:** Yes, okay.

**ADV VAS SONI SC:** But of course a further implication whether it registered with you or not was that the President, former President, had in fact delayed meeting you while he was in fact meeting the CEO of the Board together with a contractor.

**MR MOLEFE:** That is so Chairperson but at that point in time it was  
10 not a big issue for discussion but it was a concern that continued to register in my mind and it became even more so when the President after he had – we had had a discussion, the Minister of Transport, the Minister in the Presidency and I, had had a discussion with him, he suddenly said I have invited that boy, Lucky, to join us, so it was just something that was sprung on us, and as he was saying so he asked the Minister in the Presidency to call him. I did say Chairperson preceding that part of the meeting and when there were just four of us without Mr Montana I asked the President to explain to me the kind of protocol that he was using in – he used in convening that meeting, and  
20 I have also already explained what is the answer that I got from the President.

**CHAIRPERSON:** Now before Mr – before the President said I have invited – you said he said I invited that boy, was that how he put it?

**MR MOLEFE:** That is correct.

**CHAIRPERSON:** That is how he put it.

**MR MOLEFE:** That is so.

**CHAIRPERSON:** Meaning Mr Montana?

**MR MOLEFE:** That is correct.

**CHAIRPERSON:** Before he said that tell me about the discussion that happened between yourself, the Minister, Minister Dipau Peters and the President and the Minister in the Presidency, is there anything of significance you want to tell me about what happened, what discussions ...[intervenes]

**MR MOLEFE:** We did not have any discussions save for me raising  
10 this question of protocol, we didn't a discussion that meant, a discussion substantively were going to start when Mr Montana is in the meeting.

**CHAIRPERSON:** Okay, okay.

**ADV VAS SONI SC:** Now in your affidavit you mentioned a reference to the document called PRASA in Turmoil.

**MR MOLEFE:** I do sir, Chairperson.

**ADV VAS SONI SC:** And was there a discussion about the document?

**CHAIRPERSON:** Oh you mean before Mr Montana came in?

**ADV VAS SONI SC:** Before Mr Montana came in.

20 **CHAIRPERSON:** Okay.

**MR MOLEFE:** There was a discussion on the document but I think it actually happened when Mr Montana was there.

**ADV VAS SONI SC:** Oh sorry.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Alright, so very little took place before Mr

Montana was called in?

**MR MOLEFE:** Very little yes Chairperson.

**ADV VAS SONI SC:** And when Mr Montana came in what happened then?

**CHAIRPERSON:** Then the meeting really – that's when the meeting really started.

**MR MOLEFE:** When the meeting started the purpose for the meeting was explained by Minister Jeff Radebe, he said that he had been – well he starts off really by painting or attempting to paint a picture about  
10 what character I am, he starts off by saying I tried to get Comrade Popo Molefe to come and meet with the President, I told him that the President wanted him, and I sent my secretary to say so to his secretary and his secretary told my secretary that he is on leave playing golf in Knysna and he wouldn't come. Saying of course that I am on leave and I will not break my leave now because I mean, nobody tells me that there is, there will be train smash if the meeting does not happen during my leave. So, and also, I have already indicated the unconventional manner in which the meeting was being convened. So, it is not that, but basically he is saying look here is this guy he is merely  
20 the Chairman of the Board of Control of PRASA. When I tell him the President, the Head of State, wants him he does not take my comments seriously. So, I just ignored that I wanted to wait to hear if the President was going to say anything about it and he did not. Having said that he – he then said that he had attempted to have a discussion with me and Mr Montana and the Minister of Transport [intervenes].

**CHAIRPERSON:** This is now the President or Minister Radebe saying that?

**MR MOLEFE:** It is then Mr Radebe saying that. He is talking about what they had been discussing elsewhere. He says no we had a meeting of the National Executive Committee and at that meeting I had hoped to ask to get Minister Dipuo Peters to get Chairman of the Board and Comrade Popo and Lucky to come and meet with us because we were concerned about the public's spec, about what was going on in the media.

So, so he went on like that and then the Minister of Transport  
10 says well ja you attempted that but I told you, you Mr Radebe me being  
Minister Dipuo Peters that you should reign in Mr Montana tell him to stop  
making public statements which are bringing PRASA into disrepute and I  
asked you because you are close to him he worked under you.

Because at that point Mr. Radebe said no I actually Mr Montana  
is not close to me. The person who is closer to me like than Mr Montana  
close to me is Comrade Popo Molefe. I mean went with him to Botswana  
we had we were there and with President of Botswana and other people.  
It was nice, you know, I was with him in jail so he says all of that in  
response to what the Minister had said – says, had asked him. So,  
20 maybe I should let counsel lead me.

**ADV VAS SONI SC:** What happened then insofar as the purpose of the  
meeting namely to get you and Mr Montana closer together that is what I  
understand the purpose of the meeting was.

**MR MOLEFE:** Well maybe before even that the Minister stated, Minister  
of Transport stated that, Mr Montana had resigned and the Board had

accepted that it is not like that it is an issue now that he should accept that the Board has made its decision and that it was important to him to avoid personalizing these matters.

**ADV VAS SONI SC:** Now, just to go back [intervenes].

**MR MOLEFE:** Before we and then of course the President also repeated what Mr Jeff Radebe said. So, I think he said he was he had in on a state visit to the People's Republic of China and he got reports that two members of his party were having a public spat about each other and that is matter that concerned him and that members of the National Executive  
10 Committee were also worried about it and that is why he has asked us to meet.

**ADV VAS SONI SC:** Now just taking Mr Dipuo, Minister Dipuo Peters' reaction he says but look Mr Montana should accept that he resigned and the Board accepted his resignation that is how she put it. But that is inconsistent with what she had said to you a few weeks earlier. She had said but look you should have before accepting the resignation you should have discussed with me.

**MR MOLEFE:** I do not dispute that it is inconsistent, but of course in the meeting she did also say that she was informed after the fact after the  
20 Board had decided. So, [intervenes].

**ADV VAS SONI SC:** Distancing herself from the decision.

**MR MOLEFE:** That is correct. So, that was – that was her position but at that point I think also there was another matter. Counsel refer to a document called a PRASA in turmoil.

**CHAIRPERSON:** Yes, before you – you talk about it if you intent talking

about it. I am not sure whether I follow the proposition that what Minister Dipuo Peters said, at the meeting is inconsistent with her earlier attitude.

As I see it is possible that it is inconsistent but it is possible that it is not inconsistent because as I understand your evidence she makes statements suggesting that she thought you should have consulted her before accepting the – accepting the resignation in quotes of Mr Montana but it may be that once Mr Montana had left she was at peace with the fact that rightly or wrongly he was gone and if that is the position it may be that therefore her saying at the meeting of 20 August  
10 Mr Montana must accept that he is gone, maybe it is not inconsistent but it might be inconsistent with the earlier attitude which may have suggested that she might have wished to be consulted before. I just want to make sure [intervenes].

**MR MOLEFE:** The latter – the latter is what I [intervenes].

**CHAIRPERSON:** Is what you are talking about.

**MR MOLEFE:** Is what I was talking about. It is inconsistent ...[intervenes].

**CHAIRPERSON:** With the initial ...[intervenes].

**MR MOLEFE:** With the initial position because this time now, she seem  
20 to have accepted the decision of the Board and of course we had already at that time had discussions. I have had discussions with the Minister about it and the Minister was very clear that the Board was not to about to reverse.

**CHAIRPERSON:** Yes, okay.

**MR MOLEFE:** So, she knew then that that was the case then of course

we had written a detailed report to her setting out to her a number of -  
responding to a number of questions she had asked to her letter to the  
Board. So, at that meeting, I think, she had accepted.

**CHAIRPERSON:** Okay, thank you.

**ADV VAS SONI SC:** And you were obviously welcomed her intervention  
at that level where this was now a fair company, both PRASA and  
Mr Montana has moved in their separate ways?

**MR MOLEFE:** That is – that is correct, Chairperson.

**ADV VAS SONI SC:** What is the President's attitude, the former  
10 President Zuma's attitude to all of this?

**MR MOLEFE:** The thread of discussion of the president took in that  
meeting by thread I mean t-h-r-e-a-d. Was that [intervenes].

**CHAIRPERSON:** That is T not tea.

**MR MOLEFE:** Not a tea – not a tea. Was along the lines in what  
Mr Montana had been saying in his Public statement that is available if  
the Minister wants him back and the Board want him, he is willing to come  
back.

But of course he was also contradicting himself because he  
wanted to make a condition of his return the fact that this Board that he  
20 did not like should not be there. So the President says this young man is  
very experienced, he is knowledgeable on Rolling Stock and Rail matters,  
he has got the skills that the country needs and in my view he should not  
be lost to the country that some solution should be found to allow him to  
continue to ply out his skills, to use his skills in this important  
organization that is serving the best interest of commuters in our country.

**ADV VAS SONI SC:** And what was the solution he was suggesting?

**MR MOLEFE:** The solution he was suggesting was that the decision be reviewed.

**CHAIRPERSON:** And what was that decision that he was suggesting should be reviewed?

**MR MOLEFE:** It was that the Board had accepted that, released Mr Montana so you now change it to say come back Mr Montana. So the Board should then recede its decision, but this is a meeting of the ANC which means I must now go and say to the Board of Directors I was in a  
10 meeting of my party, my party says that the decision that the Board of – the Board of Control of PRASA took in releasing Mr Montana should be reviewed. Now, this is an untenable position there is no way in which one can justify that because this is there should be a distinct separate – separation of roles and powers between the party, the State and in this instance the State being represented by its organ called PRASA.

**ADV VAS SONI SC:** And how did you respond when the President, when the former President Zuma made that suggestion?

**CHAIRPERSON:** Your voice again Mr Soni.

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

20 **CHAIRPERSON:** Raise it.

**ADV VAS SONI SC:** Yes, how did you respond when former President Zuma said the Board should consider rescinding its decision.

**MR MOLEFE:** My response to the President, Chairperson was that I cannot make a commitment in a private meeting about a matter that was decided by the Board of Control.

I did not understand what the President's problem was even after I had listened to him, and I said to him,

10 "Mr Montana did not have a lifetime contract. He had a contract for a limited period. That period arrived, he said he did not want an extension. The Board agrees with him and persuade him to work with it, he begins campaigns against the Board and his campaigns were no longer serving the purpose for which the Board wanted him to stay. Therefore, Mr President, I cannot agree with you, but I am happy to convene a Board meeting so that you can address the Board and explain to them what is your problem with the decision that the Board has taken.

Of course, I must say that this is, in it was the tail end of the meeting. We had not yet dealt with what Mr Montana did in the meeting.

**CHAIRPERSON:** Yes, well I want to hear a lot about the discussion because I think that meeting and the discussion may be very important and from your affidavit I know the meeting took quite long because I think you said it ended at two a.m. so there must be a lot that was discussed  
20 about PRASA affairs. So, if you can tell, tell me more and Mr Soni carry on, can indicate areas.

**MR MOLEFE:** But from my side I have already covered a lot that I needed to cover (Intervenes)

**CHAIRPERSON:** Yes.

**MR MOLEFE:** My attitude in that meeting was that I was not going to

follow all thrills mentioned in speeches and so on. I was more interested in what is the decision of the Board, what was the basis for that decision, and that the Board can't, I can't change that decision of the board and I did so advisedly, Chairperson because Mr Montana had already threatened to take the Board to Court to challenge its decision so in that meeting I said, I am dealing only with the fact that the man's contract has expired, they asked him to stay on, he agreed.

He started working against the purpose for which he was being asked to stay and we had to release him and that for me was the most  
10 important thing and every other thing that he says he is going to challenge, he is going to, we will wait for that and I did say in the meeting I am not going to respond to the many things that Mr Montana has said, I will respond when we go to Court on those matters.

**ADV VAS SONI SC:** You say that you would respond to the many things that Mr Montana said. Are you saying at the meeting?

**MR MOLEFE:** The things he said at the meeting, in and outside that meeting. In public domain. Maybe we should come back quickly and talk about Mr Montana.

I will not be able to deal with the details of what he said. Safe  
20 to say that what became apparent to the Minister of Transport and I, and me, was that whereas we did not know the, the objective of the meeting and details what we were going to be dealing with except that it is a discussion about PRASA. Mr Montana appeared to have been thoroughly briefed and had prepared a long report for that meeting which to me it appeared that he had discussed it with the Minister in the P residency

and the President and they wanted him to present that report in our meeting with the President.

It was a very long report and it is this one that I refer to as PRASA in Turmoil which was preceded by a provision, a section of the Management Report to the Board of Directors held during the month of May when those many demonstrations were taking place at the headquarters of PRASA but the meeting was elsewhere at a hotel called Nichol, but it is a hotel on William Nichol, ja. Now Mr Montana was allowed to speak. He spoke for a very long time, a very long time.

10 **CHAIRPERSON**: Are you able to estimate?

**MR MOLEFE**: We, we left the meeting at 2 o'clock in the morning.

**CHAIRPERSON**: Having started at around 6 p.m. the previous day?

**MR MOLEFE**: It started at around six the previous day in the evening. The lion's share of that day was that of Mr Montana. Minister Dipuoi Peters said quite a number of things as well, but the essence of the presentation of Mr Montana was that he is working with a Board of Directors that does not have a good relationship with him.

It sometimes convenes meetings without you know the in-committee meetings of non-executive Directors without involving him.

20 Now the Chairman of the Board, half the time when he convenes the meeting he does not plan the agenda properly with the group's CEO. I do not know how because he would present reports to the meeting but he says he does not have enough engagement before that but in fact the Board should not choose a date that he, he did not approve of something. By the way, Chairperson, the Board had the year planner.

Meetings are planned when it is going to be, but because of the crisis at PRASA there were many other meetings which took place which were not scheduled meetings and we took a view that a meeting of the Board could not be postponed because one person is not coming even if that person is the group's CEO. We would rather not discuss what he would have presented in his absence, but we would discuss everything else that needed to be discussed.

So that is the turn that I took and then he stated that it was very clear from the beginning that this Board of Directors which is a  
10 Board of people who know nothing about rail was appointed without consulting him.

He was not asked to give his opinion on and that it is a Board that it is clear was appointed to get rid of him. Then he also says that the Minister actually appears to have had a different mandate for the Board. That is was clear from the beginning that the Minister when she insisted on bringing this Chairperson of the Board, she actually must have given him instructions to get rid of him.

Then he systematically laid complaints about other Directors; the Chair, the Chairperson of the Audit and Risk Committee, the  
20 discussions about discussions of the FCIP and Mr Steenkamp who was chairing, I think that committee would have been, was called SHEQ. SHEQ Security, Safety, Health, and Quality Committee of the Board. It was a very long document.

Yesterday Council said that, a request had been made to Mr Montana to submit that document. To me, Chairperson, the discussion

unfolded, it meant nothing to me except there is an attempt to use what Mr Montana was saying and the demonstrations that happened against the Board at PRASA to justify bringing him back to say, in fact it is the employees of PRASA who are demanding that their group CEO must come.

In fact, that was said in the meeting during the discussion. So, I am saying if I appeared to have not followed every accusation that was there, that was not fundamental to the role of the Board and its decision. It is a problem that the Minister in the Presidency. The President himself  
10 who wanted to consider these matters and the Minister of Transport needed to form a view of what they say should happen about it.

**CHAIRPERSON:** Did anybody in the meeting ever explain or maybe let me start with this. Did you understand as you participated in that meeting why, what the basis was for the Minister in the Presidency should be part of that meeting since the Minister of Transport was there?

**MR MOLEFE:** One could not question that the presence of the Minister and the Presidency. At the time the Minister and the Presidency was responsible for performance monitoring and evaluation of the Government and by extension you could say there are certain state-owned companies  
20 which fall under various department, therefore, department therefore my job requires that I also seek to understand and have concern if there appear to be problems in a state-owned company so I did not find that  
(Intervenues)

**CHAIRPERSON:** But your understanding was that it was not inconsistent with his portfolio?

**MR MOLEFE:** Yes, Chairperson I did not consider it inconsistent, but what I found inconsistent is the fact that I go into a meeting where any participant that we were not advised that would be part of that meeting. The Minister knew I was coming. I knew she was going to the meeting. The only participant we did not know was coming was Mr Montana and he comes in there with a detailed report.

Not even the Minister was asked to prepare a report for the meeting so that was what was strange and that having been preceded by the demonstration, my meeting with Mr Montana in Knysna where many of  
10 the issues, complaints he raised in his detailed presentation to the meeting called by the Presidency were similar or the same and also of course at that point in time I was also aware that as we were working on disciplining the members of staff who, when some people from outside came to demonstrate at the headquarters of the company opened the doors and gates for them to get into the building and they themselves spent hours on end not working without permission and we insisted that there should be consequence management for those people.

The consequence management during which once the individuals had been advised that they would be disciplined some of them  
20 begging not to be fired began to confess, at least I have been advised of one that she is sorry and they participated in these demonstrations.

They were encouraged by the Minister in the Presidency because he said that Mr Montana was coming back which is something similar to what we heard previously that certain managers were told that you better find yourself on the right side when that moment comes and

these individuals participated so there is this background or backdrop to this meeting and, which therefore explains why Mr Montana was allowed to give this long report to the President even in preference to the Minister who is directly accounting to the President even though we are told reports, we are meeting as members of the African National Congress but at least we should have been given the opportunity also to know what was expected of us that did not happen.

**CHAIRPERSON:** Well you have said earlier on that this was like a pattern and you have just made reference to that now. Was it said that  
10 that is- that was not an official meeting in the sense of the state, organs of state and ministers or what was the position?

**MR MOLEFE:** That is correct Chairperson. It was made clear that ...  
(intervenes)

**CHAIRPERSON:** It was made clear.

**MR MOLEFE:** Well the President convened this meeting.

**CHAIRPERSON:** Yes. As President of the party.

**MR MOLEFE:** President of the party concerned about members of the party engaging in public spend.

**CHAIRPERSON:** Okay. But effectively the discussion was one that was  
20 meant to be affected by an organ of state.

**MR MOLEFE:** That is correct Chairperson. I mean if it is a party discussion it should be talking about what is the role of the branches of party, regional committees, the provincial structures. And it should be saying this, put this on the agenda but I do not know how anybody would have taken a matter of a state organ and said now it is going to be

discussed and be resolved by on a party platform. Well it was bazaar.

**CHAIRPERSON:** Would it not whether it is right or wrong let us leave it that for now- would it not be taken by somebody who believes the centre of power is the party?

**MR MOLEFE:** Well it is probable that that is what they believed but I was on the national executive committee for a long time and I was the secretary of what was called the Governance and Legislatures Committee subcommittee of the National Executive committee. The chairperson of that committee was Dr (indistinct Frini Tshinwala) and in the discussions  
10 that committee put all the time in the ANC National Executive committee was there emphasis on the separation of powers. Separation of the party and the state and separation of the Executive arm of Government and the Legislature as well as the Judiciary so we were very clear on those matters.

But of course I think after the Polokwane conference people started- things started being conflated. I will imagine that the role of the governance and legislatures subcommittee of the NEC also diminished and we continued to see that also in public statements that are being made even now by leading members of the party.

20 **CHAIRPERSON:** Then going back to the meeting. Just another question before Mr Soni continues. You have said that what was sought by Mr Montana and Mr- and the former President, I do not know whether also by the minister and the Presidency but at least the former President and Mr Montana seemed to be that the board should review its decision by which I suspect what was meant is change its decision.

**MR MOLEFE**: That is correct.

**CHAIRPERSON**: Now are you quite clear that the decision that they wanted the board to change was the board's decision to accept Mr Montana's decision not to seek an extension of his contract as opposed to the decision of the board in July to say to Mr Montana, sorry you will have to step down because your continue stay does not serv the purpose for which we wanted you to stay.

**MR MOLEFE**: I think there is a- a connection between the two Chairperson. What I understood to have been wanted by the President  
10 was firstly that rescind the decision that he should go. Secondly consider giving him a contract, another contract maybe 5 years contract that is the best person to run this organization. This organization cannot afford to lose him. Of course, this discussion was also preceded by a statement made by Mr Montana in the same meeting that he had written to the Minister advising that should she want him to return, I think he probably wrote to the board as well that he was willing to return to take over as the Group CEO of the company. So, the President says the man might have decided to go but he is now willing to come back. He is the most skilled person in this field. The country and the company need him.

20 **CHAIRPERSON**: Did anybody in the meeting, I guess it could only have been either you or Minister Dipuo Peters, did anybody in the meeting say, hang on, what are we talking about really here? Because he made the decision, that is Mr Montana, that he is not interested in an extension of his contract. So where does this thing come from now that if the minister wants him, he is prepared to come back. Who has prompted that? Why

is he saying that? He made this decision so where does it come from to say, if you need me, I am prepared to come back. Did anybody ask that question?

**MR MOLEFE:** I did raise it maybe the latter part not as sympathetic as the Chairperson is raising it.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** But I did say, what are we doing here? I mean the man's contract expires. He says I do not want an extension. He says but I am willing to help you for 6 months, the board agrees. So, what- and the  
10 man is not preordained to be the Group CEO. The man was given a limited contract and is going so. And it was at that point what I said- when I said to the President, I did not understand what is your problem? Maybe you will say that I may not be wise enough to understand you but I am happy that I convene a board meeting. Maybe the other directors will understand your problem so come and address us. So that is what I said. But I am aware Chairperson at that point in time that there were a lot of other people who were lobbying Mr Montana to say that he wants to return.

Naturally his departure would have presented a difficult problem  
20 to those who benefitted through his presence as a major decision maker at the administrative level. Because at that time we are now going to deal- dealing with the Siyangena, Siyaya, Siphambo contracts and several others. So, if he is there, he can continue to play the role of frustrating our effort to get deeper into these matters. Make it impossible for us to access information in order to prove our case. So that is really what I

understood it to be.

**CHAIRPERSON:** Was the President at the time aware of Mr Montana's attack on the board in the media? That is what had prompted the meeting actually if I understood you correctly.

**MR MOLEFE:** Chairperson the President was aware. There is a matter I did not include in the- in my affidavit but in the light of the deep questioning that the President- I mean the Chairperson is raising, I need to bring it on board now.

**CHAIRPERSON:** Mm.

10 **MR MOLEFE:** After a long time with Mr Montana attacking the board of directors and we having started- the board having started the investigations. I and of course in my discussion with the then Treasurer General of the party Dr Zweli Mkhize. I had agreed he had suggested that I should address the leadership of the party. So, we then convened a meeting for me to talk to the top 6 of the party. The- my recollection is that the only person who was not in that meeting was the Speaker of Parliament who in her capacity as the chairperson of the party was in the top 6.

**CHAIRPERSON:** Mm.

20 **MR MOLEFE:** I addressed that meeting not talking about what is happening in PRASA and so on simply to say, you are the ruling party. This country the state-owned companies are governed in terms of the laws of this country and those laws have either been adopted from the past maybe adapted to the new situation. And several of them were laws which were made by our party, this party, so fundamentally you as the

ruling party you are the custodians of the constitution of the Republic of South Africa. But you are also the custodians of all the laws which are used to govern either state companies and so on. The key provisions that govern which you have responsibility to ensure have to happen in respect of PRASA is that there is a public finance management act, there is the South African Transport Services Act of- I think it was 2009 Act.

**CHAIRPERSON:** Mm.

**MR MOLEFE:** So, I said to them, I am not here to ask you to do anything for me as a person. What I am here to tell you that all of you, you  
10 approved my appointment as the chair of the board. In a sense you deployed me on the board of control of PRASA. And I am running that organization on behalf of the country. The board of directors was appointed by the Government by the governing party. It is subjected to sustain attack by Mr Montana but none of you has raised a voice to say, why are you taking an institution that we are using to advance the economic and development- social development objectives of the Government in the country. I said you are not doing that. So I am here therefore to tell you today that although I have been quiet for a long time I am now going to begin to act and when I act I would be applying the  
20 legal instruments that you have armed me with to run that company, the Public Finance Management Act.

**CHAIRPERSON:** Mm.

**MR MOLEFE:** One of those is the critical issue of fiduciary responsibilities. The requirement for us to manage prudently the finances of the country and to deal with corruption in the company. So that is what

I am going to be doing. I remember them saying- and the current President was also in that meeting. He says, we were not expecting this. We are going to have another meeting. Eish, you have not given us enough time to think about this. And I said, no, I am not asking for anything. I am just making you aware so that when things happen out there, at least you have been forewarned about these matters. So, the President was in that meeting Chairperson, he knew about this.

**CHAIRPERSON:** Mm.

**MR MOLEFE:** And that meeting happened before the meeting of the 20<sup>th</sup>  
10 of August and I do state in my affidavit that apart from that meeting of the  
20<sup>th</sup> of August I did not have any other meeting with the President until  
today.

**ADV VAS SONI SC:** How long before the meeting of the 20<sup>th</sup> of August  
was your meeting with the top6?

**MR MOLEFE:** I would not really be able to place time on that but it was  
when Mr Montana had started attacking the board of directors. It could  
be that he was still on the- in PRASA but I cannot really establish that ...  
(intervenes)

**CHAIRPERSON:** Sure.

20 **MR MOLEFE:** But the reality is that what I am able to establish is that in  
response to the question of the Chairperson that the President knew.

**CHAIRPERSON:** Yes. And knew quite well.

**MR MOLEFE:** And he knew quite- he knew quite well.

**CHAIRPERSON:** You had told them.

**MR MOLEFE:** I had told them.

**CHAIRPERSON:** Ja.

**MR MOLEFE:** In that meeting.

**ADV VAS SONI SC:** Just to follow up to the earlier questions Mr Molefe.

At the- at your meeting with the top 6 as I understand it they were suggesting they want to consider it and perhaps come back to you or you come back to them. Or am I wrong that that was the only possible meeting that was going to be on the cards?

**MR MOLEFE:** They were saying, but we have not- you have not given us enough time to think about what you are saying. Well implied in that  
10 statement is that they would want time at some point to think about it. But that is what- that was not what I was asking for. I was informing them that there are these things happening. You are the custodians of the laws of the country. You are the governing party. You are doing nothing because you wanted to allow space to see if the campaigns of Mr Montana would lead to the defeat of the board- the collapse of the board. And that is not happening.

**ADV VAS SONI SC:** Did they- before this meeting of the 20<sup>th</sup> of August 2015, did the top 6 call you back or informally raise this matter with you again?

20 **MR MOLEFE:** They never called me to any meeting.

**CHAIRPERSON:** And how did that meeting between yourself and the top 6 which must have been the top 5 on that day.

**MR MOLEFE:** The top 5, yes.

**CHAIRPERSON:** How did it end?

**MR MOLEFE:** Because one was absent.

**CHAIRPERSON:** Ja, one was absent. How did it end?

**MR MOLEFE:** Well it ended with the Deputy President saying, we have to go to another meeting of the working committee. We are not able to comment on what you have said as we have not had time to think about it. But I was not asking for comment. I was stating a fact that ...  
(intervenes)

**CHAIRPERSON:** You were informing them.

**MR MOLEFE:** Informing them.

**CHAIRPERSON:** Ja.

10 **MR MOLEFE:** That things are going to happen and they will be happen- they will happen persuade- pursuant rather, pursuant to protection of the interest of the company and the country.

**ADV VAS SONI SC:** What is the ... (intervenes)

**CHAIRPERSON:** Well I am- I am sorry Mr Soni. I am glad you decided to tell me that part Mr Molefe. Different members of our society in this country can make all kinds of beautiful statements about how much they are opposed to corruption and how much they abore corruption and how much they are opposed to State Capture. And how much they abore it and how much they do not want it to happen again. But if people are not  
20 prepared to tell the truth about what they know, all efforts to cap corruption are not going to bear fruit.

We need as a country to face the reality and tell one another certain truths and admit where we have not done the right things. Because as you probably know that I have been saying people should really come forward. State Capture will happen again in this country if

we find that it has happened and we are not able to make recommendations that will make sure that if implemented it never happens again. It will happen again if we do not come out and say and speak certain truths even if certain people might not be happy with those truths. Because one of the issues we have got to look at is, what did various institutions, what did various functionaries of the state, what did various bodies, what did various individuals of influence know about State Capture and at what stage. And about the levels of corruption in the country. And what were they prepared to do about it for the country.

10           Then we know various people take the oath to be faithful to the Republic of South Africa and if you ask me to be faithful to the Republic of South Africa means if the interest of the Republic of South Africa seem to clash with somebody else's interest, those of the Republic prevail. And I wrote- we send letters, the Commission to various political parties recently who are represented in Parliament and ask them to make their own contributions which includes whether over the years Parliament had adequate oversight mechanisms to perform its oversight functions effectively. And hopeful we will get some information and so. But part of what one is trying to see is how did we come to be where we are? Did  
20   certain various bodies play their part properly including Parliament? And if they did not play it properly, had they play it properly could some of the things have been avoided and could we have not reached the point where we are.

So, I just mentioned this because I just found- I just think that what you have told me is very important. You do not need to say anything

in response but I just thought I would say this. But I am not preventing you from saying something if you want to but I am just- I do not want you to feel obliged to say anything.

**MR MOLEFE:** No, I- thank you Chairperson but I believe in the values that the Chairperson has articulated, the values that requires that to the extend that the interest of the country are in conflict with our own personal interest that we would subordinate our personal or party interest to the interest of the country.

**CHAIRPERSON:** The country, yes.

10 **MR MOLEFE:** That is a value that I hold dear.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** And that is a value for which I would continue to fight for and I am not prepared to compromise my integrity, my reputation simply to endear myself to the party. But Chairperson not everybody can do that. There are many young people, young professional who begin to work. They get married, start a family, they buy a home, pay a huge bond and expensive car and children and private school. They are put by- in the positions and certain individuals in high places in the party make them believe that the extend to which they could have upward mobility  
20 whether where they are or in the broader society is dependent on them pleasing those occupying position of influence and decision making either in the state-owned companies or in the party.

I would say and I am saying it here that I think the party that I belong to is failing the country and has failed the country over this several years. That we had values which inspired and sustained us and

cost me as a young person to join the struggle for freedom to sacrifice to go in and out of jail. To be even in the last treason trial in the Apartheid government which would have meant that had the judge decided to impose the ultimate penalty, I would have been hanged. I would have died unless I was saved by the negotiations that then came shortly after that. But the party being so strong and having enjoyed so much good will from ordinary and poor people of this land has failed them. And it pains me because I know as a young man I have had to go into communities and talk to ordinary people about why it was important for them to  
10 become part of the struggle for freedom. It was not an easy job with (indistinct) organisations, a few months later they are dead but we kept on going back to the people until finally by the 80s the mid-80s the movement for liberation had (indistinct) every corner of our country. And the current ruling government party became a household name and the system of Apartheid collapsed under the pressure of the resistance of ordinary people in various communities. And that huge prizes, the ultimate prize was paid by many of those ordinary people either through assassination or all forms of murder which happened to our people.

So, it pains me Chairperson to sit where I am sitting and seeing  
20 what is happening. I recall one time I was almost like an isolated individual and referred to part of that where I say from a hero of the liberation struggle, I became this individual who was now being isolated. And because I could not none of this influential people in my party could raise a voice and say, he is doing the right thing. We support what you are doing. You others who are doing what is wrong, stop it, prepared to

do that.

**CHAIRPERSON:** Hmm.

**MR MOLEFE:** I did an expensive interview and I was very angry Chairperson when I did that interview.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** I did that interview with the Mail and Guardian.

**CHAIRPERSON:** Hm. Hm.

**MR MOLEFE:** And that article would say.

**CHAIRPERSON:** Hm.

10 **MR MOLEFE:** That in the governing party.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** There is a lot of riff raff.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** Of individuals who believe that PRASA is their farm. That PRASA is a place where they just want to come and harvest.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** They do not see it as a vehicle.

**CHAIRPERSON:** Hm.

20 **MR MOLEFE:** That has to empower and improve the lives of the poor people. I made that interview. It was a long interview.

**CHAIRPERSON:** hm.

**MR MOLEFE:** To the credit of my party they did not try to attack me.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** They kept quiet. And they did so because they knew I was informing them about the terrible things that we were uncovering

as we were investigating.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** But probably some of them were benefiting from the balance that other people uses like jazz. They were getting funding also this illicit funding from – from the coffers of the party the – be they for conferences or what.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** When I came into PRASA Chairperson I found that the GCE of PRASA – GCO could be instructed, look the (indistinct) has got  
10 a big rally and I need this – give us trains, give us busses.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And I said no Minister we cannot do this thing. You cannot this is a state owned company. If you want to use its assets you got to pay for using those assets.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** I do not mind if PRASA gives you preferential rates.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** But ask them to give you a quote to tell you how much it will cost for them to transport people to an event of the ruling party.

20 **CHAIRPERSON:** Hm.

**MR MOLEFE:** We stopped that thing.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And obviously I would not have endeared myself to a lot of people who began to feel that I am becoming disloyal to the party. That I am loyal to the country.

**CHAIRPERSON:** But you know it is just very important because if there are more and more people who do not throw that line (indistinct) and stays and if there are more and more influential people in the party who would think that they can just pick up the phone and phone a CEO of a parastatal of a state owned entity and say the party needs A,B,C,D now or needs A,B,C,D and that must be done then it creates serious problems. It creates serious problems. So obviously what the country needs are people who are going to be in government departments, state owned entities and in Boards who will be firm to do the right thing. And  
10 in many cases if we had the right number of people who would do the right thing and be firm maybe we would not be where we – we are in many respects in terms of levels of corruption because I think everybody accepts that we have levels of corruption that are really totally unacceptable. So I really appreciate what you have said and it is very important. We – we – there are certain things that if we do not change we must forget about making this country better. We must just forget. There are certain things that must change. Thank you Mr Soni I appreciate that we have. But this is important what we have been talking about. Extremely important. But before we leave that meeting  
20 can I ask whether you shared with the top 5/top 6 at that meeting also what the – some of the things that may have emanated from the Public Protector's Interim Report because I think the Public – the final report might not have been out at that time?

**MR MOLEFE:** I did Chairperson.

**CHAIRPERSON:** You did.

**MR MOLEFE:** To say that there are these malfeasances, corruption identified by the Public Protector which is bad for the company and the country which we needed to deal with. But also to say that in the – on the other side as well we – we are seeing things that require that as a board we exercise our fiduciary duty in the best interest of the company and the country. They were aware of that and it was in that context that I was – I was saying to them we are going to act.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And if you look at the time period Chairperson maybe in  
10 relation to the question that was raised by Counsel. It would have been then after the release of the ...

**CHAIRPERSON:** Yes.

**MR MOLEFE:** The Public Protector's Report. But of – by that time I was already aware of some of the critical issues identified in the Interim Report.

**CHAIRPERSON:** Yes. Yes. But also you confirm that after that meeting nobody from the top 6 ever came back to you to say, you know with regard to what you told us on that day we would like to do something about this.

20 **MR MOLEFE:** Nothing came.

**CHAIRPERSON:** Nobody.

**MR MOLEFE:** Nobody came back to me.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Chairperson.

**CHAIRPERSON:** Yes. Thank you.

**ADV VAS SONI SC:** Mr Chairperson there are a number of issues I want to deal with. I take a caution you – placed earlier I say it is about seven minutes past four but I wonder if I can ask...

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** For a bit of indulgence. They are not going to be long but our mind set might well be different if I came to it at a different time Mr Chairperson.

**CHAIRPERSON:** Yes well I – I can sit longer but also I would be concerned. I want to know Mr Molefe's situation because he – he may  
10 have been justified to think we would have finished much earlier today and we have – we did not finish. One – there are two possibilities. Do you have in mind that if we stay a little longer we would finish with his evidence or do you think that he might still need to – to come back?

**ADV VAS SONI SC:** He definitely has to come back.

**CHAIRPERSON:** He has to come back.

**MR MOLEFE:** Because – those are the matters you raised about oversight.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** And his affidavit deals quite in detail.

20 **CHAIRPERSON:** Yes. Mr Molefe in terms of your own life coming back like Monday I am assuming I do not know whether that is what you have in mind.

**ADV VAS SONI SC:** If Mr Molefe is available.

**CHAIRPERSON:** He is available.

**ADV VAS SONI SC:** It would – that is the appropriate time.

**CHAIRPERSON:** How is your situation?

**MR MOLEFE:** I do have a difficulty Chairperson with Monday.

**CHAIRPERSON:** With Monday okay.

**MR MOLEFE:** I have ...

**CHAIRPERSON:** Yes.

**MR MOLEFE:** A critical Board Strategy meeting.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Which must approve.

**CHAIRPERSON:** Yes.

10 **MR MOLEFE:** A document that is required in terms of the statutory provisions and it has to be with the Minister.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Shortly after that meeting.

**CHAIRPERSON:** No that is fine.

**MR MOLEFE:** On Tuesday I again have an appointment outside Gauteng.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** With my orthopaedic – I have had knee surgery Chairperson.

20 **CHAIRPERSON:** Okay.

**MR MOLEFE:** But the appointment with the orthopaedic I can postpone which means I can – I had already paid for my air ticket and so on. I can cancel that.

**CHAIRPERSON:** No, no, no.

**MR MOLEFE:** And come on Tuesday or Wednesday.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Otherwise the whole week next week I will not be available if I do not cancel that.

**CHAIRPERSON:** Oh so next week the best you can do is to be available on Tuesday but that would entail cancelling the appointment with ...

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

**CHAIRPERSON:** Yes and you said probably that is out Gauteng.

**MR MOLEFE:** Out of Gauteng.

10 **CHAIRPERSON:** Yes. Look I – I think that we can make a plan for another day without needing you to cancel any appointment so I think we can accept that next week is going to be difficult for you. Another date must be arranged for – on another week not next week then. That is fine. That is fine. But let us look at – how much time do you think you need for us to...

**ADV VAS SONI SC:** About twenty minutes more Mr Chairman.

**CHAIRPERSON:** About twenty minutes. Would that be fine with you Mr Molefe – twenty minutes.

**MR MOLEFE:** That would be fine with me Chairperson.

20 **CHAIRPERSON:** Yes. But maybe let us take a short break and then come back. That is fine. Say about five minutes really. We adjourn.

**REGISTRAR:** All rise.

**MEETING ADJOURNS**

**HEARING RESUMES**

**CHAIRPERSON:** Yes Mr Soni.

**ADV VAS SONI SC:** Mr Chairperson again I apologise but it just seems that these are short questions. It would – I am hoping to try and present as complete a picture about the two meetings as possible.

**CHAIRPERSON:** Yes okay.

**ADV VAS SONI SC:** Mr Molefe at the meeting with the Top 6 you did in a sense indicate (indistinct) the matters that the Public Protector had raised?

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

**ADV VAS SONI SC:** Now one of the questions I wanted to ask you is I  
10 mean then we know that you would have talked about maladministration, corruption and so on. Did you tell them some of the amounts involved? For example you mentioned earlier today the Siyangena contract in the Public Protector's Report at that time was R1.95 billion. Did you indicate to the Top 6 that you know we are not dealing with small – small amounts of money?

**MR MOLEFE:** I would not have given the account of every amount but I  
would have given examples of them. For example this R1.9 billion in the Public Protector's Report was there. And the approximately R4 billion relating to the Braamfontein Depot modernisation because  
20 already that had arisen by November and February – November 2014 and February 2015. Those figures we were aware of them and I would have mentioned – not conclusively with regard to every other figure because the investigations by Werksmans was still continuing.

**ADV VAS SONI SC:** And you would obviously have told them about the Swifambo contract which at that stage was marked at about R3.5

billion?

**MR MOLEFE:** I did. I did Chairperson. Because by that time the Chairman of a company called Swifambo concerned that as things unravelled he was going to lose everything that he worked hard for and he will say I do not want to lose everything because of Swifambo. Swifambo was invited into it recently. He then disclosed to us the monies that they were paying to individuals who purported to be collecting the money on behalf of the ruling party. So by that time that was known and I think – let me not say I think. By the time I agreed  
10 with the Treasurer General of the party about addressing the Top 6.

**CHAIRPERSON:** Top 6.

**MR MOLEFE:** He was aware of what was emerging and related to Swifambo and Siyangena and other things pertaining to your Prodigy and Strawberry Worx. Because those were already emerging at that time. Of course one of the reasons I met with him was to say, hey you – you – comrade you are the Treasurer General of the party these people are saying they were collecting money for the party, do you know them? Because initially he did not know them so that was really – it is normal to do so to establish the fact. Of course their response  
20 was that – his initial response was that he did not know them. And he did not receive any money from them.

**CHAIRPERSON:** You say initial and finally?

**MR MOLEFE:** Well the – the – later on there is a problem of English one needs to be careful when talking to the lawyers.

**CHAIRPERSON:** Ja I know English is not our language.

**MR MOLEFE**: But they – later on for example he did admit that he knew some of the people. He did not say he got money from them. For example a lady called Maria Gomez who would feature probably in the court applications or maybe evidence by other witnesses from Angola.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: Where he said that is (indistinct) friend.

**CHAIRPERSON**: Yes I think I (indistinct) in some statements about ...

**MR MOLEFE**: And with regard to Mr Moodley he says he might not know him but he is a comrade you know. He supports...

10 **CHAIRPERSON**: The party.

**MR MOLEFE**: The party and so on. He did not say he gave us money.

**CHAIRPERSON**: Yes he said he supports the party.

**MR MOLEFE**: Ja he supports the party. And I said, hey man you know I have been in this movement for many years nowhere did I come across him even when I was working in – in what is today called KwaZulu Natal when I worked in Durban, all those townships there – Lamontville, Kwa Mashu, Clermont all of those places I never came across him but you see if you say he is I do not expect to have known everybody. All I can say is that he would not have been prominent.

20 **CHAIRPERSON**: Yes. Now going now back to the meeting of the Top5 / Top6 is there room for any member of the Top 6 who attended that meeting when you addressed them – is there room for any member of the Top 6 who attended that meeting to say Mr Molefe did not give us the impression that there was really serious situation of corruption and maladministration involved in PRASA that the Board was trying to fight

against or investigate. Is there – would that be room for anybody to say that?

**MR MOLEFE**: Chairperson obviously that is what is – might go on the mind of an individual and it would not necessarily be true where I suppose he can want to say that but it is not going help because if you say at the time when he spoke to us we were not aware that this corruption was so bad they cannot say the same about the subsequent months.

**CHAIRPERSON**: Yes. Yes.

10 **MR MOLEFE**: Even Nkandla.

**CHAIRPERSON**: Yes. Yes.

**MR MOLEFE**: So that is the problem they would have.

**CHAIRPERSON**: Yes. But what you can say is, based on what you told them.

**MR MOLEFE**: Ja.

**CHAIRPERSON**: There should be nobody who can say that?

**MR MOLEFE**: There should be nobody who can say that.

**CHAIRPERSON**: Yes okay.

**MR MOLEFE**: Because the application of the Public Finance  
20 Management that our duty to (indistinct) the constitution of a country and other related legislation were predicated upon the malfeasance that I was saying is coming out of our investigations and PRASA and the findings of the Public Protector so they cannot say they knew nothing.

**CHAIRPERSON**: Yes.

**MR MOLEFE**: They would then have to explain to me why – in that

context did I say I was going to...

**CHAIRPERSON:** Yes.

**MR MOLEFE:** Act and apply the Public Finance Management....

**CHAIRPERSON:** What was prompting you?

**MR MOLEFE:** Ja what was...

**CHAIRPERSON:** Ja.

**MR MOLEFE:** They would have a difficulty.

**CHAIRPERSON:** Ja. No, no, no. Again you know when you talk about the parastatal – I mean the state owned entities you – we all read what  
10 we read about the state of PRASA at the moment and one is bound to look back and when one hears about things that were happening during the years when you were Chairperson of the Board and the things that may have happened before your time one is bound to say could it be that if so and so and so and so and so and so had given support and done the right thing could it be that this could have been avoided maybe PRASA would be in a better position today?

**MR MOLEFE:** My answer is in the affirmative Mr Chairperson.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** And eish I must also say that it must be a difficult  
20 witness for this Counsel it cannot be (indistinct) (mumbling).

**CHAIRPERSON:** No we appreciate.

**MR MOLEFE:** I know I was given this difficulty to Mr Pretorius as well.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** I – I wrote to leaders of my party firstly I wrote to the Deputy President just before I left the office as Chair – Chairperson of

PRASA I identified the critical challenges which were facing that company and I asked him and the government to intervene to get things back on track. One of the issues I raised was that here it is now the Board has been made dysfunctional, individuals in the Board were (indistinct) to resign. Some of them resigned. The Minister of Transport is holding back his nominee on the Board because for him it is important that the Board should not have a quorum. The representative of National Treasury resigned and in all fairness in my statement it is not clear what was the cause of his resignation but in  
10 fairness to him he did not resign because he was being lobbied. He resigned because he ceased to be an employee of National Treasury. Now having resigned he could not represent National Treasury on the Board of PRASA.

**CHAIRPERSON:** PRASA.

**MR MOLEFE:** But it – but it meant that a replacement could be found easily because you just nominate and send one of the senior employees to the Board. But it was not in the interest of the new Minister then to make sure that there is a quorum and the Board can function fully. Because the Board would have functioned notwithstanding the fact that  
20 a few individuals had resigned having been persuaded because others refused to resign.

**CHAIRPERSON:** Hm.

**MR MOLEFE:** That despite the offers which were made to them that look we will give you another position, money you will not be (indistinct) to this by resigning from this one. They stayed on. So had

the Minister discharged her constitutional duty as an executive authority responsible for oversight on PRASA the Board would have continued to operate but he did not do so. So I said to the Deputy President you got to make sure that there is a proper Board. You have got to get the Group CEO for – for the company because that too was being (indistinct). So there are a number of critical issues that I had raised so nobody can say they were not aware of problems.

**CHAIRPERSON:** Do you have a copy of the letter that you say you sent to the Deputy – then Deputy President?

10 **MR MOLEFE:** I think I found it but what I found was an unsigned copy. I cannot find the signed one.

**CHAIRPERSON:** But you would know if it – it basically in substance the copy reflects what ...

**MR MOLEFE:** No the substance is the same.

**CHAIRPERSON:** Is the same ja. No that would be...

**MR MOLEFE:** I will try and get it from PRASA.

**CHAIRPERSON:** If we can get that that would be important.

**MR MOLEFE:** Thank you Chairperson.

**CHAIRPERSON:** Yes. But maybe for the sake completeness did you  
20 get a response to that letter?

**MR MOLEFE:** No acknowledgment. They literally...

**CHAIRPERSON:** Nothing.

**MR MOLEFE:** The many letters I wrote whether to Parliament or to the Portfolio Committee, to SCOPA.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** I received no response.

**CHAIRPERSON:** Yes. Well I know that in your affidavit you do talk about the letter that you said you sent to the Chairperson of the Portfolio Committee on Transport and you did not get a response and then you sent a letter – also sent a letter to the then speaker of Parliament Ms Baleka Mbete and you say you did not get a response. What I cannot remember is whether you do attach copies of those letters because if you do not but if you can find them it would be important.

10 **MR MOLEFE:** The letters...

**CHAIRPERSON:** They are here?

**MR MOLEFE:** The letters I can find.

**CHAIRPERSON:** Okay alright.

**MR MOLEFE:** But Counsel can indicate what – how much of that he has got.

**CHAIRPERSON:** Okay no that is fine. No, no. As long as they are here it is fine.

**ADV VAS SONI SC:** They are annexure Mr Chairperson.

**CHAIRPERSON:** No that is fine. Thank you.

20 **ADV VAS SONI SC:** I am just finally from my side Mr Molefe at the meeting with the Top 6 did you indicate who the individual beneficiaries were and you will recall that throughout the week two names have cropped up all the time namely Mr Roy Moodley and Mr Makhensa Mabunda. Did you identify those people to the Top 6 well the meeting of the Top 6?

**MR MOLEFE:** No I – I did not do so Chairperson and neither would I have had the motivation to do so because we are busy with the investigation. If the matters are going to result in – in litigation you do not start talking about them until you reach that point. So I did not. And I do not think I made a mistake by not mentioning them.

**ADV VAS SONI SC:** No, no I was just for the sake of completeness as to what they knew.

**MR MOLEFE:** Yes.

**ADV VAS SONI SC:** Now in relation – sorry – in relation to the meeting  
10 of the 20 August you say it was described as a party meeting in obviously an ANC meeting. Who described it as that?

**MR MOLEFE:** It was described as meeting of comrades of the ANC by the President of the ANC who at that time was also the President of the Republic of South Africa.

**ADV VAS SONI SC:** So at that meeting it was quite clear that this is at whatever level not a meeting of organs of state or matters of an official nature it was a party meeting relating to an organ of state?

**MR MOLEFE:** It is so Chairperson because it was not official if it was the element of the state the organ of state, the official the Minister  
20 would have had to submit a report or would have had to ask me to submit a report.

**CHAIRPERSON:** I wonder why it may have been decided that it should be seen as a party meeting apart from the fact that as you indicated certain concerns had been expressed at some meeting of the party from what you have said because as far as having that meeting as an official

meeting of organs of state if that was what was wanted it could have happened because all the relevant functionaries were there in terms of the Chairperson of the Board was there, the Minister of Transport whom the Board reported was there, the President of the country was there and then the other one was the Minister in the Presidency. But that is something you might not be able to – to answer?

**MR MOLEFE:** I would not know why.

**CHAIRPERSON:** Yes.

**MR MOLEFE:** But all I can say is that there would probably be no other  
10 reason save to say that those who convened the meeting did not want to give evidence as by way of record because if it was an official meeting I would have had to go and report to my Board of Directors as the Board of Directors.

**CHAIRPERSON:** Yes, yes.

**MR MOLEFE:** And it would have been minuted and I probably would have had to write a proper report. So people don't want that to lead any evidence so they would not want it to be an official statement.

**CHAIRPERSON:** Yes okay thank you.

**ADV VAS SONI SC:** I'm not going to be much longer Mr Chairperson  
20 but these are issues [indistinct] to distinction that Mr Molefe made and I'll just raise it with him. One of the issues you raised Mr Molefe, was the distinction between the State, for example PRASA as an organ of State and the party which governed the State, that's the distinction you made earlier in your evidence.

**MR MOLEFE:** Correct Chairperson.

**ADV VAS SONI SC:** Now when Mr Montana complained that he had not been consulted before the Board had been appointed what was the reaction of Minister Dipuo Peters, the President and Minister Radebe?

**MR MOLEFE:** There was no response from the President and Mr Radebe but Minister Dipuo Peters said, but you are an employee of a company you can't demand that the appointment – you should be involved in the appointment of the Board. So you don't have that right, Minister Peters did make that point.

**CHAIRPERSON:** Actually I'm glad that Mr Soni has gone back to it  
10 because I wanted to ask – I wanted to say, did Mr Montana really say that, even in that meeting, that he was not consulted before your Board was appointed because it seems to me, maybe it might be the kind of thing that somebody would say outside of a meeting involving the people that he thinks should have consulted him because it's some kind of criticism and those would be the Minister, maybe the President as well, so I was quite surprised that you said, even in that meeting he complained that he had not been consulted before your Board was appointed.

**MR MOLEFE:** He complained in that meeting Chairperson and that is  
20 precisely the reason why the Minister responded to that complaint in the meeting otherwise there would not have been a platform to respond to that.

**CHAIRPERSON:** Yes but she was the only one who...[intervenes].

**MR MOLEFE:** She is the only one who spoke about it.

**CHAIRPERSON:** Yes okay.

**ADV VAS SONI SC:** And in response to what she said what were the – what was the reaction from President Zuma and Minister Radebe?

**MR MOLEFE:** My recollection is that they said nothing about that specific point.

**CHAIRPERSON:** Yes, did Mr Montana respond to that or not or did he leave it at that?

**MR MOLEFE:** I think he left it – he was happy with that detailed report that...[intervenes].

**CHAIRPERSON:** Yes that you had given.

10 **MR MOLEFE:** Just his views...[intervenes].

**CHAIRPERSON:** Now you said earlier on that he took the [indistinct] of the time of that meeting in presenting his report, if I understood you correctly are you able to say, maybe he took – he must have spoken for more than an hour presenting his report or you are not sure but what your impression is that most of the time he did – he took quite some time?

**MR MOLEFE:** Chairperson it was far more than an hour.

**CHAIRPERSON:** Far more than an hour?

**MR MOLEFE:** It was more than two hours, it was a long presentation.

20 I spoke very little in that meeting so did Minister Jeff Radebe and the President, probably the only other person...[intervenes].

**CHAIRPERSON:** Who took some time.

**MR MOLEFE:** But was not prepared for the meeting because he didn't know what to expect because Minister Dipuo Peters [indistinct] who would have spoken about the meetings he had with me with Mr

Montana, her concern about the relationship and so on ja. So I think we did have a meeting early in July or in June between me and Mr Montana at the residence of the Minister.

**CHAIRPERSON:** So – I don't want to forget this part, before you came to the meeting you only knew that the meeting was about to be – was going to be about PRASA affairs, nothing more specific?

**MR MOLEFE:** Nothing more because...[intervenes].

**CHAIRPERSON:** Yes, once you get there – once, or as you left the meeting what was your impression of what the purpose of the meeting was, having been there for hours and having heard who spoke and so on, were you able to say, okay I think the real purpose of this meeting was A?

**MR MOLEFE:** My impression when I left the meeting was, the real purpose of the meeting was to get Mr Montana as the Group Chief Executive Officer of the company and I think the President was being used, hopefully to intimidate me because you have the [indistinct] of the President and you know, it's very difficult for people to say no. So I think...[intervenes].

**CHAIRPERSON:** What was the purpose as far as you were concerned?

**MR MOLEFE:** We can express our suspicions about who was behind it but it doesn't help if you can't collaborate.

**CHAIRPERSON:** Yes, but – ja okay thank you.

**ADV VAS SONI SC:** The second issue I want to raise about that meeting, about what Mr Montana said is, he alleged at the meeting that

Minister Dipuo Peters was trying to get rid of him, now that's quite a serious charge against a sitting Minister in the presence of the President. Let me ask you, what was her reaction to that, Minister Dipuo Peters?

**MR MOLEFE:** I think Minister Dipuo Peters took umbrage to that allegation and pointed to the fact that, that matter was a matter taken by the Board and the fact that – a decision taken by the Board and the fact that she appointed this Board, had nothing to do with any agenda to remove the Group CEO. I suppose Mr Montana probably would have  
10 needed to say to the Minister, you actually told me previously that you don't want me. So the decision that this Board has taken, actually was eventuating the objective that you had when you spoke to me but he didn't say so. [Indistinct] say you know, the manner which you appointed this Board and your brought in this Chairman of the Board – I must say on a public domain as well he said, together with those – Mr Montana, that I am the Chairman that fires Group CEO's, I fired the Group CEO of Petro SA, I had fired the CEO of the Armaments Corporation of South Africa, ARMSCOR and he says there is this pattern and wherever this person goes, he destroys State owned  
20 companies and he is intent on destroying PRASA.

**ADV VAS SONI SC:** But he didn't say at this meeting?

**MR MOLEFE:** No he didn't say it in that meeting...[intervenes].

**CHAIRPERSON:** Public Domain?

**MR MOLEFE:** In the media.

**ADV VAS SONI SC:** Now what was the President's reaction to Mr Montana's allegation about Minister Dipuo's motive?

**MR MOLEFE:** The President kept quiet you would have expected him to say, look he's a member of my Cabinet, if indeed he did that, somebody should have reported through the proper channels, the Minister – he didn't say anything. I think the objective of the meeting and of the President and – the Minister and the President was, look, we hope that this meeting will convince the Chairman of the Board to rescind through whatever mechanisms the decision that his Board has  
10 taken and to some extent he put the Minister under pressure to say, it is the desire of the President that you stop – you reverse the decision of the Board but the Minister didn't want to go that route it would have been a very ugly scene because there was no way in which the Board of Directors would meet and allow a Minister, outside the Board of Directors to reverse it's decision.

**CHAIRPERSON:** Now you have already said, and you do say in your affidavit but you said also in your oral evidence that the meeting – that meeting ended at about 2AM the following morning, now – and you said it had started at around 6PM the previous day on the 20<sup>th</sup>. So it started  
20 on the 20<sup>th</sup> it went on to the 21<sup>st</sup> of August. Now from 6PM on the 20<sup>th</sup> to 2AM on the 21<sup>st</sup>...[intervenes].

**MR MOLEFE:** Is eight hours.

**CHAIRPERSON:** Eight hours, now if you are right in saying that, in your analysis, that the purpose of that meeting was to get you to be convinced that Mr Montana must be allowed back at PRASA it seems

that, then those who were attending were prepared to stay for quite a long time to try and achieve that.

**MR MOLEFE:** They were prepared to stay for that long.

**CHAIRPERSON:** And during the process everybody had to listen to a former CEO of the entity speak for, you say, about two hours...[intervenes].

**MR MOLEFE:** More like giving a key note address.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** I'm going to end on this note Mr Chairperson. If  
10 this was a meeting – an official meeting where decisions would have to be rational and so on and a decision was taken that Mr Montana should be re-appointed, in law, there may have been good grounds for review but let me accept for a moment that this was a decision among comrades. What I'm failing to understand is this, that Mr Montana says, he doesn't want to work with the Board but the purpose of the meeting is, he must come back and work for the Board, I mean, even a party – if a party made a decision like that, most people would regard it as irrational, would you agree with me?

**MR MOLEFE:** That is correct but how many rational decisions have  
20 been made by people in high positions. The latest of that was a Minister waking up because people in the party say, fire the Board and then she fires the Board and she gets into trouble. So it would have been an irrational decision but it doesn't follow that those in that meeting would not have done so. In the first instance it was irrational to even begin to want to discuss the matter in the manner in which it

had been discussed. One would have expected that what would happen is that, even if it was a discussion about the party – members of the party, the President would have called the Minister and articulated what his concerns and fears were and would have called me to talk to me and in both instances attempt to get how we are reacting to what he is saying. Even before you take it to another forum but that was not done. I think it's like - this meeting was like school kids, learners being called to the office of the principal for the principal to read the riot act to them using the office – the status of that office to get them to  
 10 review their decision. So that I'm saying that even the manner in which the meeting was called was irrational, it was irrational to have Mr Montana preparing a long presentation which nobody was warned about which – in a meeting where nobody else was told that they needed to give any presentation, that in itself is irrational Chairperson.

**ADV VAS SONI SC:** I was not suggesting that it didn't happen, what I'm trying to suggest is, and I'm going to put this to you, one must question the *bone fides* of those taking that decision, do you agree with me because if it's not in the interest of the party how can...[intervenes].

**MR MOLEFE:** That is so, that is so Chairperson.

20 **CHAIRPERSON:** Well I take it that Minister Radebe would not have been at the meeting of the top six, top five that you addressed because he was not part of the top six?

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

**CHAIRPERSON:** And therefore he would not have known what you told the top six on that occasion but the, then President, was aware what

you told the top six because this meeting of the 20<sup>th</sup> of August happened after the meeting that you addressed of the top six, is that right?

**MR MOLEFE:** It is correct Chairperson.

**CHAIRPERSON:** Yes, okay.

**MR MOLEFE:** But I need to say Chairperson, that he was not privy to the discussion of the top six doesn't put him in any disadvantaged position.

**CHAIRPERSON:** Yes, tell me more about that.

10 **MR MOLEFE:** Because he is in a Cabinet, he works with the Minister of Transport, the Minister of Transport reports regularly to the President and to the economic cluster on which Mr Radebe was sitting. So – and by the way Chairperson the issues about PRASA were very prominent in the – from the time when the complaints were given to the Public Protector and the interim report issued and so on and they remained – government would have taken an interest in those matters.

**CHAIRPERSON:** So you think that he probably knew enough, you say he must have known enough to be able to say that we should not be trying to get the Board to change its decision.

20 **MR MOLEFE:** [Indistinct] is a Minister, he should know that one does not do that. He had been the Minister of Public Enterprises so exercising on the side of many State owned companies. So he can't claim ignorance on issues of governance and the relationship between State owned companies and different ministries.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** I have no further questions at this stage Mr Chairperson.

**CHAIRPERSON:** Well shouldn't Mr Molefe tell us the end of that meeting so that next time he deals with other things, shouldn't we just finalise how that meeting ended?

**ADV VAS SONI SC:** As it pleases. Mr Molefe we now know what the purpose of the meeting was and so on, how did the meeting – what was the formal outcome at the meeting or the outcome if there wasn't a formal...[intervenes].

10 **MR MOLEFE:** There was no formal outcome Chairperson. After I challenged the President to come and address the Board of Directors – the Board of control of PRASA to explain why he had a difficulty accepting the decision of the Board of control and having said that I would not change the decision of the Board of Directors as a result of a private meeting of comrades outside government and the Board itself. The President was tired so he fell asleep, the meeting just ended abruptly like that. There was nobody to summarise it was the person who called a meeting now had fallen asleep.

**CHAIRPERSON:** Okay is there anything else in regard to the meeting  
20 that you want to – that you don't think you haven't touched upon that you want to highlight so that next time you come back Mr Soni can move on to something else?

**MR MOLEFE:** Chairperson save the conclusion that, what was quite apparent in that meeting and what was a matter of great concern was that the head of the State, the President of the Republic of South Africa

and the President of the governing party which is the custodians of all the instruments of governments including the constitution was now, directly attempting to interfering with the matters of the Board of Directors of PRASA that was really of great concern.

**CHAIRPERSON:** Yes, no thank you. I had said earlier on you should make notes in case there are other things that you might wish to mention which counsel might not have asked but because you will come back maybe you want to deal with those when you come back but if you want to deal with some now, I give you the opportunity.

10 **MR MOLEFE:** Chairperson I would rather elect to...[intervenes].

**CHAIRPERSON:** Yes, to do it next time.

**MR MOLEFE:** To sleep over the matter and if there are then I can come back on...[intervenes].

**CHAIRPERSON:** No, no I just wanted to keep my promise to you because I had made that undertaking. Mr Soni, I think that, if at all possible there should not be – we shouldn't allow a long time to lapse before Mr Molefe comes back, subject to everyone's situation maybe we could look at the week after next and find a day, preferably not a Monday but that is – if you can explore one of the dates with Mr Molefe  
20 but also we might not need him for a day it might be – I don't know what your estimate is, an hour or two hours.

**ADV VAS SONI SC:** About two hours.

**CHAIRPERSON:** About two hours so its sometimes easier to accommodate a shorter time than a whole day. So at this stage Mr

Molefe you don't know how your situation might be during that week?  
You don't have to commit yourself I just want to know...[intervenes].

**MR MOLEFE:** On reflection Chairperson I think if I keep my two commitments then I can appear here on – I don't know what the date will be, on the Wednesday of next.

**CHAIRPERSON:** Yes, Wednesday next week.

**MR MOLEFE:** I'll come for – I just want to see my orthopaedic and then come back.

**CHAIRPERSON:** Yes okay no that's fine I think that should be fine  
10 with us.

**ADV VAS SONI SC:** Mr Chairperson we will formalise with Mr Molefe what it is and we will obviously accommodate him as [indistinct] on Wednesday that suits him.

**CHAIRPERSON:** Ja okay, no that's fine. So I'm happy as long as it's something that is not too inconvenient to you, I'm very conscious of the fact that – I think last time you may have spent two or three days in the Commission, this time you've spent three days already so we do need to give you some accommodation in terms of dates, the Commission has taken a lot of your time.

20 **MR MOLEFE:** I was telling counsel that it's not a big deal to me because I had to give evidence in the Delmas treason trial for the whole month and I say whole month, meaning all four weeks appearing every day, cross-examined for three weeks by senior counsel. Evidence in chief for a week so I know these things.

**CHAIRPERSON:** Ja so this is really not much compared to that and of course that was hostile atmosphere I guess.

**MR MOLEFE:** That is true.

**CHAIRPERSON:** Yes, yes okay but thank you very much for having come to give evidence once again and that you have been able to stay for a little longer beyond 4 o' clock because we wanted to finish a certain section of your evidence. We are going to adjourn and then on Monday Mr Soni, will it be Mr Achmat?

**ADV VAS SONI SC:** No Chairperson it will be Ms Ngoyi.

10 **CHAIRPERSON:** Ms Ngoyi from PRASA, we're continuing with PRASA.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Okay no that's fine thank you very much we'll adjourn for the day and on Monday we'll start at normal time 10 o' clock, we adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 16 MARCH 2020**